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2 IN THE UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION

5
6 IN RE: NATIONAL PRESCRIPTION MDL No. 2804
7 OPIATE LITIGATION Case No. 17-md-2804
8
9 This document relates to: Judge Dan Aaron
10 The County of Cuyahoga v. Purdue
11 Pharma L.P., et al. Polster

12 Case No. 18-OP-45004
13
14

15 Videotaped deposition of
16 JAMES A. GUTIERREZ, ESQ.

17 January 31, 2019
18 9:48 a.m.

19 Taken at:
20 Kelley & Ferraro
21 950 Main Avenue, Suite 1300
22 Cleveland, Ohio

23
24
25 Renee L. Pellegrino, RPR, CLR

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<p>1 THE VIDEOGRAPHER: On the record,</p> <p>2 9:48.</p> <p>3 JAMES A. GUTIERREZ, ESQ., of lawful age,</p> <p>4 called for examination, as provided by the</p> <p>5 Federal Rules of Civil Procedure, being</p> <p>6 previously duly sworn, as hereinafter</p> <p>7 certified, deposed and said as follows:</p> <p>8 EXAMINATION OF JAMES A. GUTIERREZ, ESQ.</p> <p>9 BY MS. WOODS:</p> <p>10 Q. I want to ask you some questions</p> <p>11 about your education and employment background.</p> <p>12 A. Okay.</p> <p>13 Q. Where did you attend college?</p> <p>14 A. Kent State University.</p> <p>15 Q. When did you graduate?</p> <p>16 A. 1980.</p> <p>17 Q. Where did you attend law school?</p> <p>18 A. University of Akron.</p> <p>19 Q. And when did you graduate law</p> <p>20 school?</p> <p>21 A. '84.</p> <p>22 Q. Other than your law degree, do you</p> <p>23 have any other advanced degrees or academic</p> <p>24 training?</p> <p>25 A. No.</p>	Page 15	Page 17

<p>1 Q. Addiction services?</p> <p>2 A. No.</p> <p>3 Q. And prior to your employment with</p> <p>4 the Cuyahoga County Prosecutor's Office, where</p> <p>5 did you work?</p> <p>6 A. I worked at two small firms for the</p> <p>7 year. I got my law license in '85, and I</p> <p>8 started at the prosecutor's office in '86, so</p> <p>9 that one year I worked in the private sector for</p> <p>10 two small firms.</p> <p>11 Q. And in either of those jobs at the</p> <p>12 firms did you have -- did your work involve</p> <p>13 prescription opioids?</p> <p>14 A. No.</p> <p>15 Q. Did it involve drugs?</p> <p>16 A. No.</p> <p>17 Q. How did you come to join the</p> <p>18 Cuyahoga County Prosecutor's Office?</p> <p>19 A. It's what I always wanted to do.</p> <p>20 Q. And which unit did you work in</p> <p>21 originally?</p> <p>22 A. Well, you were -- you had a</p> <p>23 three-month rotation with general felony,</p> <p>24 juvenile and child support for the first year,</p> <p>25 and then when you prove yourself, then you go</p>	Page 18	<p>1 status, kind of the cases that don't fit into</p> <p>2 the units that we have in the office.</p> <p>3 Q. Okay. So you didn't work on</p> <p>4 prescription opioid cases when you were in</p> <p>5 general felony or in special investigations?</p> <p>6 A. I couldn't tell you for sure or not,</p> <p>7 but -- I don't remember back then, but the usual</p> <p>8 cases of people stealing drugs, doctor shoppers</p> <p>9 would come through the general felony unit. So</p> <p>10 I couldn't tell you specifically.</p> <p>11 Q. Okay. In the course of your job,</p> <p>12 who do you communicate with on a regular basis</p> <p>13 on issues that relate, either directly or</p> <p>14 indirectly, to opioids?</p> <p>15 A. The investigative agencies that I</p> <p>16 work with.</p> <p>17 Q. And which investigative agencies do</p> <p>18 you work with?</p> <p>19 A. The main one would be the pharmacy</p> <p>20 board.</p> <p>21 Q. What other agencies?</p> <p>22 A. The local agencies. Any other local</p> <p>23 agency. There's, like, WEB, Westshore</p> <p>24 Enforcement Bureau. There's a similar -- God,</p> <p>25 what's the name of it on the east side? There's</p>	Page 20
<p>1 into general felony.</p> <p>2 Q. And for how long were you in general</p> <p>3 felony?</p> <p>4 A. Approximately three years, two and a</p> <p>5 half years.</p> <p>6 Q. Where did you go after general</p> <p>7 felony?</p> <p>8 A. What they call special</p> <p>9 investigations, which was a precursor to the</p> <p>10 economic crime unit.</p> <p>11 Q. And for how long were you in special</p> <p>12 investigations?</p> <p>13 A. From '89 to '94. Actually, middle</p> <p>14 of '88, so what, four and a half, five and a</p> <p>15 half years.</p> <p>16 Q. And from 1994 on you've been in the</p> <p>17 economic crimes unit?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. In which of those different units</p> <p>20 did your work involve prescription opioids?</p> <p>21 A. Well, the economic crime unit. See,</p> <p>22 the economic crime unit is kind of a misnomer in</p> <p>23 a sense that we do all -- besides traditional</p> <p>24 white collar crime, we do all licensed</p> <p>25 professionals, public corruptions, people of</p>	Page 19	<p>1 a similar one on the east side. And these</p> <p>2 are -- what they are are different detectives</p> <p>3 from different jurisdictions all basically work</p> <p>4 with one unit. Like the Westshore Enforcement</p> <p>5 Bureau are detectives from different cities.</p> <p>6 There's one on the east side. And then all</p> <p>7 local jurisdictions in Cuyahoga County, all the</p> <p>8 police departments, if they have an issue in a</p> <p>9 particular incident there, they'll call us.</p> <p>10 Q. Do you work with the Drug</p> <p>11 Enforcement Administration?</p> <p>12 A. Yes.</p> <p>13 Q. Would you say that you communicate</p> <p>14 on a regular basis with the DEA?</p> <p>15 A. I used to, but not recently.</p> <p>16 Q. During what period of time were you</p> <p>17 communicating regularly with the DEA?</p> <p>18 A. Well, I -- to answer your question</p> <p>19 candidly, it depends who is sitting in that</p> <p>20 chair with the DEA locally, and that</p> <p>21 relationship. So over the years we would have</p> <p>22 better relationships with some of the diversion</p> <p>23 directors than other ones, and so -- and the DEA</p> <p>24 has their own policies, whether they want to</p> <p>25 come to us with certain cases. Sometimes they</p>	Page 21

<p style="text-align: right;">Page 22</p> <p>1 did. Sometimes they didn't. So over the years 2 it's been kind of hit and miss.</p> <p>3 Q. Okay. Are there particular years 4 where you recall having more routine 5 communication relative to the other years?</p> <p>6 A. I would say from middle '90s to the 7 middle 2000s, maybe 2005.</p> <p>8 Q. And are there years when you recall 9 having less communication with the DEA relative 10 to the other years?</p> <p>11 A. Again, I would say it was hit and 12 miss. It would depend on the case and things of 13 that nature.</p> <p>14 Q. I believe you stated that currently 15 you don't have regular communication?</p> <p>16 A. Well, I do. I mean, I do. I don't 17 know what you mean by "regular." Do we -- do I 18 talk to them over a period of a year? Yes. We 19 have certain individuals that are in a task 20 force that are local CPD officers that work with 21 the DEA. They have a task force. So if you 22 want to -- if you want to say that, yeah, then I 23 have a regular communication with them.</p> <p>24 Q. But over the years you had the most 25 communication with your DEA counterparts between</p>	<p style="text-align: right;">Page 24</p> <p>1 A. No.</p> <p>2 Q. Do you receive any reports from Ohio 3 Hospital Association?</p> <p>4 A. No.</p> <p>5 Q. And, to your knowledge, does anyone 6 else in your office receive any of these 7 reports?</p> <p>8 A. To my knowledge, they don't.</p> <p>9 Q. Do you receive regular reports from 10 the DEA relating to opioids?</p> <p>11 A. No.</p> <p>12 Q. Do you receive regular reports from 13 other federal, state or local agencies related 14 to opioids?</p> <p>15 A. No, not regular reports; no.</p> <p>16 Q. To what extent during your career 17 with the office have you been involved in policy 18 setting?</p> <p>19 A. What do you mean?</p> <p>20 Q. To what extent have you been 21 involved in amending or modifying the policies 22 or the practices of the prosecution in your 23 office?</p> <p>24 MR. SPELLACY: Objection.</p> <p>25 A. I really don't understand that</p>
<p style="text-align: right;">Page 23</p> <p>1 the mid-1990s to 2005?</p> <p>2 A. I would say, yes, worked more 3 closely with them, yes.</p> <p>4 Q. Does your office have any manuals or 5 anything similar relating to opioid 6 investigations or prosecutions?</p> <p>7 A. No.</p> <p>8 Q. As part of your work do you draft 9 regular written reports?</p> <p>10 A. No.</p> <p>11 Q. Are you aware of any regular reports 12 relating to opioids coming out of your office?</p> <p>13 A. Not that I am aware of.</p> <p>14 Q. How about reports related to 15 potential or actual drug prosecutions?</p> <p>16 A. No.</p> <p>17 Q. Do you receive any regular reports 18 from anyone relating to opioids --</p> <p>19 MR. SPELLACY: Objection.</p> <p>20 Q. -- such as the medical examiner's 21 office, for example?</p> <p>22 A. No.</p> <p>23 Q. Do you receive any reports from the 24 County Board of Health related to drug-related 25 ER visits or other drug-related matters?</p>	<p style="text-align: right;">Page 25</p> <p>1 question, to be honest with you, okay.</p> <p>2 Q. Do you have any authority or any 3 involvement in changing the way that prosecutors 4 carry out their responsibility in your office?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you have any authority or 8 involvement in changing the policies or 9 practices of the prosecutors with respect to 10 drug enforcement?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. No, I do not have any authority to 13 do that.</p> <p>14 Q. Do you set priorities for your 15 office in terms of what kinds of cases it will 16 prosecute?</p> <p>17 A. For my office?</p> <p>18 Q. Yes.</p> <p>19 A. Not for the office, no.</p> <p>20 Q. And who does that?</p> <p>21 A. I would assume the -- the county 22 elected prosecutor sets all the policies.</p> <p>23 Q. To what extent have you been 24 involved in budget issues for your office?</p> <p>25 A. None.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. Who is involved in budget issues for 2 your office?</p> <p>3 A. Again, the elected county prosecutor 4 would deal with budget issues.</p> <p>5 Q. Do you know how the budget is 6 prepared, what the budget process is?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. No, I don't.</p> <p>9 Q. Have you ever been asked to provide 10 quantitative or qualitative information in 11 support of a budget request?</p> <p>12 A. No.</p> <p>13 Q. To what extent do you exercise your 14 discretion over whether to bring a case?</p> <p>15 A. I have complete discretion whether 16 to -- to bring a case or not.</p> <p>17 Q. And are there any policies or 18 practices to help guide a prosecutor's 19 discretion?</p> <p>20 A. The law.</p> <p>21 Q. And when you say "the law," what are 22 you referring to specifically?</p> <p>23 A. Referring to if a case is brought to 24 me, I will evaluate it to whether it's proper to 25 bring charges or not, so I rely on the law</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Well, in what other circumstances 2 have you spoke publicly on behalf of the office?</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. I would assume the only other 5 instance would be if I was interviewed by the 6 media as a result of a case.</p> <p>7 Q. Okay. And of course here today in 8 your deposition, correct?</p> <p>9 MR. SPELLACY: Objection.</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. Apart from seminars, media 12 interviews and today's deposition, have there 13 been other occasions in which you have been 14 responsible for speaking publicly on behalf of 15 your office?</p> <p>16 MR. SPELLACY: Just to clarify, in 17 this part of the deposition he's here in his 18 individual capacity. He had the 30(b)(6) 19 already. So I just want to clarify your 20 question there.</p> <p>21 Go ahead. You can answer.</p> <p>22 A. Besides seminars and -- I'm trying 23 to think besides seminars if I spoke on behalf 24 of the office. I can't think of anything right 25 now.</p>
<p style="text-align: right;">Page 27</p> <p>1 whether we have the evidence to bring charges.</p> <p>2 Q. Okay. So you look at the law to 3 determine whether the evidence is going to be 4 sufficient to prove a crime, correct?</p> <p>5 A. Correct.</p> <p>6 Q. What other factors do you consider?</p> <p>7 A. There are no other factors. If the 8 evidence is sufficient enough to bring charges, 9 then we do it.</p> <p>10 Q. Are there any written policies or 11 practices regarding -- to provide guidance in 12 how to exercise your discretion or to provide a 13 list of factors that should be considered?</p> <p>14 A. Are you talking written policies?</p> <p>15 Q. Yes.</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. To what extent have you been 18 responsible for speaking publicly on behalf of 19 your office over the years?</p> <p>20 MR. SPELLACY: Objection.</p> <p>21 Go ahead.</p> <p>22 A. Like I said, when I would talk at 23 certain seminars and things of that nature, my 24 office was aware of the fact that I was doing 25 that.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay.</p> <p>2 A. And I want to make sure that we 3 understand each other. Seminars also include 4 training. You know, when I would speak in front 5 of, let's say, investigators in training 6 situations, I would consider that a seminar.</p> <p>7 Q. Okay. During your career have you 8 personally served on any task forces related to 9 drugs?</p> <p>10 A. No, not officially.</p> <p>11 Q. Have you served on task forces 12 informally that relate to drugs?</p> <p>13 A. No.</p> <p>14 Q. What makes you say "not officially"?</p> <p>15 A. Because I worked with drug task 16 forces but I wasn't on the drug task force.</p> <p>17 Q. And which drug task forces did you 18 work with?</p> <p>19 A. I can't -- can't remember. Over the 20 years there have been numerous types of task 21 forces that would get together for a while and 22 then break up.</p> <p>23 Q. And what was the nature of the work 24 that you did with those task forces?</p> <p>25 A. It would be the prosecution of drug</p>

<p>1 offenses.</p> <p>2 Q. And during what period of time did 3 you provide assistance to task forces related to 4 drugs?</p> <p>5 A. Whenever they were formed. I can't 6 give you a number.</p> <p>7 Q. You don't recall?</p> <p>8 A. No. Like right now, like I said, 9 you know, CPD has a diversion police officer 10 that now is on the DEA. They call them a task 11 force. I mean, so I work with them. That's 12 happened over the years. I can't tell how many 13 times.</p> <p>14 Q. Has anyone in your office served on 15 a task force related to drugs?</p> <p>16 A. I don't know the answer to that 17 question.</p> <p>18 Q. Is the prosecutor's office part of a 19 larger department of Cuyahoga County's 20 government?</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. I don't know what you mean by that.</p> <p>23 Q. Does the prosecutor's office work 24 under Cuyahoga County?</p> <p>25 A. They're a separate and distinct</p>	<p>Page 30</p> <p>1 drugs?</p> <p>2 Q. Yes.</p> <p>3 A. Vicodin, Percocet, OxyContin, any 4 derivative of oxycodone, whatever that may be, 5 Endocet, Norco, all type of those type of drugs, 6 yes. Schedule 3, 2s.</p> <p>7 Q. And those would all be considered 8 prescription opioids?</p> <p>9 A. Correct.</p> <p>10 Q. And when we're speaking more 11 generally about opioids, what is your 12 understanding about what the term "opioids" 13 encompasses?</p> <p>14 A. Ma'am, my view of opioids, what that 15 means, is what we just talked about.</p> <p>16 Q. Okay. So it includes the 17 prescription pills?</p> <p>18 A. Correct.</p> <p>19 Q. Does it also include heroin?</p> <p>20 A. Those are street drugs, which I do 21 not do. Now, I should say that's unless they 22 get caught up in a case that I do. For example, 23 people will trade prescription drugs for heroin. 24 So in a case that I have, heroin might come up 25 in those circumstances.</p>
<p>1 entity within Cuyahoga County.</p> <p>2 Q. How many full-time employees work 3 for the prosecutor's office?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. I could approximate around -- are 6 you just talking about attorneys or support 7 staff or everybody?</p> <p>8 Q. First I'm asking you how many 9 full-time employees, including support staff.</p> <p>10 A. I'd say between 250 and 300.</p> <p>11 Q. And do you know how many attorneys 12 work for the prosecutor's office?</p> <p>13 A. I would say between 150 and a little 14 over 200.</p> <p>15 Q. How have those staffing numbers 16 changed over time?</p> <p>17 A. I don't know the answer to that 18 question.</p> <p>19 Q. Earlier today during your 30(b)(6) 20 deposition you gave us your understanding of 21 what an opioid is. When you and others in your 22 office talk about opioids, what drugs does that 23 category include?</p> <p>24 MR. SPELLACY: Objection.</p> <p>25 A. You want me to specifically name the</p>	<p>Page 31</p> <p>1 Q. I see.</p> <p>2 To your knowledge, is heroin 3 considered an opioid?</p> <p>4 A. I'm not -- I'm not a doctor. I'm 5 not a pharmacologist.</p> <p>6 Q. So you don't know?</p> <p>7 A. Generally speaking, I would say 8 heroin fits into the opioid classification.</p> <p>9 Q. Okay. Does methamphetamine fit into 10 the classification opioid?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. I don't know that. I don't think 13 so. I don't know that.</p> <p>14 Q. Does fentanyl?</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 A. I would say fentanyl does.</p> <p>17 Q. How about carfentanil?</p> <p>18 MR. SPELLACY: Objection.</p> <p>19 A. Same. And, again, I'm not a 20 pharmacist, so I don't know.</p> <p>21 Q. Is cocaine considered an opioid?</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. Again, I'm not a pharmacist, but I 24 would not consider cocaine to be an opioid.</p> <p>25 Q. And how about marijuana? When we're</p>

<p style="text-align: right;">Page 34</p> <p>1 talking about opioids, would you consider 2 marijuana included? 3 A. No. 4 Q. Does your office provide any 5 training programs related to opioids? 6 A. I don't know that. I don't -- I 7 don't know. 8 Q. You mentioned earlier that you had 9 attended a number of different training seminars 10 related to drugs and even to prescription 11 opioids specifically. 12 A. Correct. 13 Q. Were any of those training seminars 14 funded by your office? 15 A. No. 16 Q. Were any of them funded by Cuyahoga 17 County generally? 18 A. Not that I know of. 19 Q. To your knowledge, does your office 20 provide any training relating specifically to 21 prescription opioids? 22 A. Only within our unit. 23 Q. And what training is available 24 within the economic crimes unit? 25 A. It's just that when I get a case, I</p>	<p>1 involves prescription opioids? 2 A. Yes. 3 Q. And what about fentanyl or 4 carfentanil? 5 A. Same thing. 6 Q. They would be handled by the 7 separate unit unless the case also involves 8 prescriptions? 9 A. Yes, unless there's an over -- 10 Q. Are there any prescription opioids 11 that you've heard of but have not encountered in 12 your work? 13 A. I've never had a case with 14 carfentanil yet. 15 Q. With carfentanil you said? 16 A. Yes. 17 Q. Based on your knowledge as a 18 prosecutor, are there some opioids that are 19 never lawful to possess? 20 MR. SPELLACY: Objection. 21 A. Prescription drugs you're allowed to 22 possess in the right circumstances. 23 Q. And are there some opioids, like 24 heroin, that are never lawful to possess? 25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 will train a younger prosecutor how to do these 2 cases. 3 Q. Okay. So would you characterize 4 that as informal on-the-job training? 5 A. Yes. 6 Q. Which opioids have you had personal 7 experience with in your work as a prosecutor? 8 MR. SPELLACY: Objection. 9 A. Geez. All the oxycodone 10 derivatives, hydromorphone. Is that Dilaudid? 11 Oh, God. What else? Those are the ones that 12 come to mind right now. 13 Q. And you've referred specifically to 14 prescription opioids. Have you had any personal 15 experience in your work as a prosecutor with 16 heroin? 17 A. Just, like I said, if it's a -- if 18 it comes up in a prescription case. 19 Q. Okay. 20 A. But we have a specific unit that 21 does all the street drugs. 22 Q. And you don't deal -- you don't 23 prosecute those crimes that involve just heroin? 24 A. Unless it comes up within my case. 25 Q. Which would also be a case that</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Are there some kinds of opioids that 2 people in the community legitimately possess and 3 use -- 4 MR. SPELLACY: Objection. 5 Q. -- by prescription? 6 A. By prescription, yes. 7 Q. Are there circumstances under which 8 possession of Vicodin or oxycodone would not be 9 treated as a crime? 10 MR. SPELLACY: Objection. 11 A. Ask that question again. 12 Q. Are there circumstances in which 13 someone is possessing, let's say, Vicodin -- 14 A. Okay. 15 Q. -- and it would not be treated as a 16 crime? 17 A. Yes. 18 Q. There are many such instances, 19 right? 20 A. Yes. 21 Q. And that's because the Food and Drug 22 Administration and the DEA has allowed Vicodin 23 to exist due to its medical benefit? 24 MR. SPELLACY: Objection. 25 A. Yes. It's a scheduled drug.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Do you know what medically 2 appropriate uses for prescription opioids are? 3 MR. SPELLACY: Objection. 4 A. Ask me that question again. 5 Q. Based on your experience prosecuting 6 cases that involve prescription opioids -- 7 A. Yes. 8 Q. -- what is your understanding of 9 some medically appropriate and legitimate uses 10 for prescription opioids? 11 A. Cancer, palliative care. In certain 12 situations, chronic, benign pain, in very rare 13 circumstances. 14 Q. And you don't disagree that people 15 who are experiencing extreme pain deserve to 16 have that pain treated, do you? 17 A. Oh, no. They should treat it, yes. 18 Q. In fact, it would be tragic to keep 19 someone who was terminally ill, in the final 20 days of their life, from accessing medicine, 21 right? 22 MR. SPELLACY: Objection. 23 A. That would be horrific. 24 Q. Now, there are circumstances in your 25 work where you would treat the possession of a</p>	<p style="text-align: right;">Page 40</p> <p>1 A. That's correct. 2 Q. Okay. In the investigations that 3 you've conducted involving prescription opioids, 4 have you found it difficult to determine whether 5 or not a doctor has written an opioid 6 prescription for a legitimate medical purpose? 7 MR. SPELLACY: Objection. 8 A. Is it difficult for me to determine 9 that? Not really. 10 Q. Okay. Do you encounter any 11 challenges in those types of cases? 12 MR. SPELLACY: Objection. 13 A. Of course it's always a challenge, 14 okay. But again, it's all contextual, ma'am. 15 We're talking generally speaking. All I can 16 give you is general answers. 17 Q. Okay. Is one of the challenges that 18 the doctor/patient medical information is 19 confidential information? 20 A. No, because we can get to the 21 medical records in the State of Ohio. 22 Q. And what process do you have to 23 undertake to obtain private medical records? 24 A. A search warrant. 25 Q. So you need a search warrant. And</p>
<p style="text-align: right;">Page 39</p> <p>1 prescription opioid as a crime, correct? 2 A. Correct. 3 Q. In your role as a prosecutor, how do 4 you distinguish between the lawful possession 5 and use of a prescription opioid? 6 A. It's contextual. 7 Q. Tell us more about that. 8 A. Well, you're only allowed to have a 9 prescription for a legitimate medical purpose 10 with a bona fide doctor/patient relationship, so 11 you have to be able to get a prescription 12 lawfully, and that lawfully is defined in 13 federal codes and state codes. So I go by what 14 the law says and put it into particular context 15 to determine whether it's lawful or not. 16 Q. Okay. So patients can only legally 17 obtain prescription opioids if they have a valid 18 prescription from a licensed doctor, right? 19 A. It has to be lawful. Just can't get 20 a prescription from a doctor because it could 21 be -- because the statute says lawful 22 prescription. 23 Q. So the licensed doctor can only 24 prescribe it for a legitimate medical need, 25 right?</p>	<p style="text-align: right;">Page 41</p> <p>1 what do you need to establish to obtain a search 2 warrant? 3 A. Probable cause. 4 Q. So you have to establish probable 5 cause and effectuate a search warrant before you 6 can get your hands on those confidential 7 documents? 8 A. Absolutely, unless the patient gives 9 us consent to go get the medical record. 10 Q. In addition to having to undertake 11 that process to obtain the records, you can't 12 easily know what a doctor saw or didn't see that 13 would have led him to write a prescription? 14 A. That is correct. 15 Q. And even if you do know, it can be 16 challenging in a court of law to try to 17 second-guess a doctor's medical opinion, right? 18 MR. SPELLACY: Objection. 19 A. No, not really. 20 Q. You don't think it's challenging? 21 A. No, because in those circumstances, 22 it's pretty obvious what a doctor is doing based 23 upon all the circumstantial evidence that we 24 have developed. 25 Q. Okay. You have to enlist the help</p>

<p>1 of an expert to testify as to the medical 2 decisions, correct?</p> <p>3 A. That's correct. We engage experts, 4 you are right.</p> <p>5 Q. Are there situations in which people 6 engage in perfectly lawful use of opioids that 7 still cause problems for your office --</p> <p>8 A. No.</p> <p>9 Q. -- such as addiction or overdoses?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. Well, see, you just switched the 12 question there. You asked me something 13 different than what you just followed up on.</p> <p>14 Q. So I'll rephrase my question --</p> <p>15 A. Okay.</p> <p>16 Q. -- so that you're clear because I 17 want to make sure I'm clear.</p> <p>18 A. Please.</p> <p>19 Q. Are there situations in which people 20 may engage in perfectly lawful uses of opioids 21 but still cause problems because they 22 accidentally overdose, for example?</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 A. Yeah, that could happen.</p> <p>25 Q. And when that happens, does it cause</p>	<p>Page 42</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 A. Well, that's a loaded question.</p> <p>3 What do you mean by that?</p> <p>4 Q. So I'm asking if you've had any 5 personal experiences in life that affect the way 6 that you think about prescription opioids.</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 Q. The way that you approach your -- 9 your work.</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I really don't know how to answer 12 that question because we're all basically a sum 13 of all of our experiences. We can't sit there 14 and forget about things that happened to us. 15 But how does it affect my work? I wouldn't say 16 any of my personal experiences affected my work. 17 I've had personal experiences in this area that 18 -- how should I say -- that saddened me, okay, 19 but it hasn't affected the way I approach my 20 job.</p> <p>21 Q. Fair enough.</p> <p>22 During your career as a prosecutor 23 in Cuyahoga County, have you ever known a time 24 when abuse of drugs was not a significant 25 problem for the county?</p>
<p>Page 43</p> <p>1 any additional work or problems for your office?</p> <p>2 MR. SPELLACY: Objection.</p> <p>3 A. That's a difficult question to 4 answer. Somebody overdoses, does that cause a 5 problem to our office? Well, if there's 6 something illegal surrounding that, then yeah, 7 that would cause problems; otherwise, 8 unfortunately, that would be the medical 9 examiner's problem, having to look at a dead 10 body.</p> <p>11 Q. Does your department do any 12 information collection focused on the question 13 of what portion of its work or duties relate to 14 improper uses of lawfully prescribed opioids?</p> <p>15 A. I have no idea what you just asked 16 me, okay. If you could explain that.</p> <p>17 Q. Does your office attempt to track 18 how much of its work relates to conduct that 19 happened from improper use of a lawfully 20 prescribed opioid?</p> <p>21 A. Not that I know of.</p> <p>22 Q. Have you had any personal 23 experiences in your life that affect your 24 feelings or your beliefs about prescription 25 opioids?</p>	<p>Page 44</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 A. Was not a significant problem, no.</p> <p>3 Q. Drugs have always been a significant 4 problem for the county?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. I would assume for the whole 7 country.</p> <p>8 Q. And as you sit here today, what is 9 the most significant drug problem facing 10 Cuyahoga County?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. Look. You know, I'm an individual 13 looking at this through only one lens. I don't 14 have the big lens. So I can't really answer 15 that question because I'm just looking at the 16 prescription side of it, the practitioner side 17 of it.</p> <p>18 Q. Based on your experience in the 19 prosecutor's office, are you aware of which type 20 of drug poses the most significant problem to 21 the county here today in 2019?</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. I could tell you what the 24 significant prescription drugs are, but I 25 couldn't tell you the street drugs because I</p>

<p>1 don't do those, and I can't tell you if the 2 prescription drugs are -- never mind. 3 Q. Do you know which drugs have been 4 most prevalent in the county in the last two 5 years? 6 MR. SPELLACY: Objection. 7 A. You just mean all drugs? 8 Q. Yes. 9 A. I couldn't -- I couldn't give you an 10 answer on that. 11 Q. You don't know? 12 A. No. I could speculate, but I don't 13 have the numbers in front of me and can say so 14 many heroin, so many fentanyl, so many 15 OxyContin, so many -- I don't have that 16 information. 17 Q. You don't know. 18 Would it surprise you to learn that 19 crack is the leading drug of choice in Cuyahoga 20 County currently? 21 MR. SPELLACY: Objection. 22 A. I don't have personal knowledge of 23 that. 24 Q. But that does not defer with your 25 personal experience working in the office?</p>	Page 46	<p>1 determine how many Cuyahoga residents died each 2 week due to a drug overdose? 3 A. I don't have that, no. I know it 4 increased in the last few years. 5 Q. Over what years did it increase? 6 A. I would say starting about '14, '15 7 is when I started to notice more dead bodies 8 than usual. 9 Q. And is this based on your review of 10 statistics and data or your experience in 11 individual cases? 12 A. Just looking at the media and 13 talking to people in my office. 14 Q. Okay. And based on those 15 conversations and the media reports, what's your 16 understanding of how -- which drug or drugs were 17 responsible for the increase that you believe 18 occurred in 2014? 19 A. My understanding is that there's 20 certain laws and regulations been passed in the 21 last few years to decrease the number of opioid 22 prescriptions and opioids on the street, and as 23 a result, people are starting to turn to heroin 24 and fentanyl and that's what's killing them. 25 But that's my understanding of what's going on</p>	Page 48
<p>1 MR. SPELLACY: Objection. 2 A. There's always been that issue of 3 drugs in our office. 4 Q. Do you know how long cocaine has 5 been a problem for Cuyahoga County? 6 MR. SPELLACY: Objection. 7 A. Again, I can't sit here and -- I 8 don't have those specific numbers. You want me 9 to speculate and assume. I don't want to do 10 that. 11 Q. Well, here's a question. So you've 12 been with the county for more than three decades 13 now. 14 A. Correct. 15 Q. In your time with the county, has 16 cocaine always been a problem? 17 MR. SPELLACY: Objection. 18 A. I would agree. 19 Q. And in your time with the county, 20 when has methamphetamine been a problem? 21 MR. SPELLACY: Objection. 22 A. I don't know. I really haven't 23 dealt with methamphetamine. 24 Q. Do you have any knowledge or any 25 statistical information that would allow you to</p>	Page 47	<p>1 on the streets right now. There's been laws, 2 like I said, passed that have reduced the number 3 of scrips that can be written, and people are 4 getting addicted to the opioids, and then they 5 go to the street drugs when they can't get the 6 opioids, prescription opioids I should say. 7 Q. And, again, is that understanding 8 based on any statistical analysis or research? 9 A. No. That is talking to my -- my 10 officers on the street. 11 Q. Do you know which drugs were the 12 major focus of your office over the last 15 13 years? 14 MR. SPELLACY: Objection. 15 A. Again, I'm only a little compartment 16 here with prescription drugs, so I couldn't give 17 you the answer to that question. 18 Q. Do you know if the top priority for 19 your office is targeting criminal drug dealers 20 who are illegally selling heroin and fentanyl? 21 MR. SPELLACY: Objection. 22 A. I would assume that's one of our 23 tasks that we prioritize. 24 Q. But you don't know if it's the top 25 priority for your office?</p>	Page 49

<p>1 A. Exactly. I don't know if it's the 2 top one.</p> <p>3 Q. And no one in your office has 4 communicated to you the top drug priorities?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. No.</p> <p>7 Q. At any point during your tenure at 8 the office?</p> <p>9 A. No.</p> <p>10 MR. SPELLACY: Someone on the phone 11 is making some noise, so if you could mute your 12 phone, please. Thank you.</p> <p>13 Q. As far as you know, when was the 14 first time that someone overdosed on opioids in 15 Cuyahoga County?</p> <p>16 A. I don't know the answer to that 17 question.</p> <p>18 Q. Do you know the first time when 19 someone overdosed on prescription opioids 20 specifically?</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. I don't know the answer to that 23 question.</p> <p>24 Q. When was the first time your office 25 considered filing charges in an opiate-related</p>	Page 50	<p>1 was happening out in the streets.</p> <p>2 Q. Can you describe in more detail what 3 was happening on the streets in the late '90s?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. Oh, OxyContin was just -- forget 6 about heroin and fentanyl. Well, fentanyl 7 wasn't even around. But that was the drug to 8 get, especially, I believe, with the 80 9 milligram. It was going for a dollar a 10 milligram. So one pill was going for 80 bucks, 11 and that was causing all sorts of issues.</p> <p>12 Q. And how do you know this? What's 13 the basis?</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 A. From my personal experience from 16 prosecuting those cases.</p> <p>17 Q. Would you say that OxyContin then 18 was the drug of choice in the late 1990s in 19 Cuyahoga County?</p> <p>20 A. Absolutely.</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. And you got to understand something. 23 There is a subset of individuals out there that 24 just want the prescription drugs. So yes, that 25 was the choice of drug for that subsection of</p>	Page 52
<p>1 prosecution?</p> <p>2 MR. SPELLACY: Objection.</p> <p>3 A. I don't know the answer to that 4 question. I don't know anybody who would.</p> <p>5 Q. And when was the first time your 6 office considered filing charges in a 7 prescription opioid case?</p> <p>8 MR. SPELLACY: Objection.</p> <p>9 A. Again, all I can tell you is what I 10 have -- what my experience was since basically 11 1989, when I started doing practitioners.</p> <p>12 Q. When was the first time you filed a 13 prosecution related to prescription opioids?</p> <p>14 A. Early '90s.</p> <p>15 Q. Were prescription opioids a problem 16 in the early '90s?</p> <p>17 MR. SPELLACY: Objection.</p> <p>18 A. Absolutely.</p> <p>19 Q. And what kind of problem were they 20 posing in the 1990s in Cuyahoga County?</p> <p>21 A. When OxyContin came out, it was -- 22 it was like a jailbreak. It just exploded.</p> <p>23 Q. And when did that occur?</p> <p>24 A. The late '90s, when OxyContin first 25 went on the market. It was unbelievable what</p>	Page 51	<p>1 addicts who want prescription drugs. That was 2 it.</p> <p>3 Q. And when you're describing the 4 subsection of addicts, are you talking about 5 people who are -- who have an addictive 6 personality?</p> <p>7 A. I'm talking about people whose drugs 8 of choice, because they're addicts, are 9 prescriptions. I've talked to many of these 10 individuals, and they like to have prescription 11 drugs because they know the quality of the drug 12 and what they're getting as opposed to out on 13 the street sometimes you don't know what you're 14 getting, but there is a subsection of addicts 15 that just do prescription drugs.</p> <p>16 Q. In your experience, that posed a 17 significant problem to the county in the late 18 1990s?</p> <p>19 A. And moving forward.</p> <p>20 MR. SPELLACY: Objection.</p> <p>21 Q. How many such cases did you 22 encounter in the late 1990s involving 23 prescription opioid abuse?</p> <p>24 A. Well, you have to be specific. 25 Again, I go after the doctors, okay, so there</p>	Page 53

<p style="text-align: right;">Page 54</p> <p>1 are a number of doctors I prosecuted in the '90s 2 for opioid prescription abuse. 3 MR. SPELLACY: At your next line of 4 questioning, when you change, can we take a 5 break, whenever you change? 6 MS. WOODS: Sure. We can take a 7 break now. Let's go off the record. 8 THE VIDEOGRAPHER: Off the record at 9 10:27. 10 (Recess had.) 11 THE VIDEOGRAPHER: On the record, 12 10:35. 13 BY MS. WOODS: 14 Q. So before we broke you were 15 discussing the noticeable surge in prescription 16 opioid abuse in the late 1990s. 17 A. Um-hum. 18 MR. SPELLACY: Objection. 19 Q. Did the number of prescription 20 opioid prosecutions or investigations start to 21 increase at that time? 22 MR. SPELLACY: Objection. 23 A. I can't really say if they did or 24 not because it's all a matter of resources. 25 Q. So, to your knowledge -- and I</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Do other prosecutors within the 2 economic crime unit focus on prescription opioid 3 prosecutions? 4 A. I'm sure now and then they'll do a 5 nurse or something like that, but I'm the guy 6 that does the practitioners. 7 Q. Okay. 8 A. Let me qualify that answer by saying 9 there could be a point in time where one of the 10 people in the unit will do a prescription ring, 11 or something like that, with my guidance. 12 Q. Okay. And then talking about the 13 broader office, the entire prosecutor's office, 14 within that office how many prosecutors work on 15 cases involving prescription opioid crime? 16 MR. SPELLACY: Objection. 17 A. Again, you're talking about a broad 18 question, and, again, I couldn't tell you 19 because a lot of the cases go into general 20 felony. If they don't rise to a certain level 21 of complexity, our unit does not do that. 22 Q. And how many prosecutors make up the 23 general felony unit? 24 A. I couldn't tell you. I don't know 25 the number. It would have to be over a hundred.</p>
<p style="text-align: right;">Page 55</p> <p>1 understand you were in the economic crime unit 2 from the mid-1990s onward, correct? 3 A. Um-hum. Yes, ma'am. 4 Q. So you were in the unit that 5 prosecuted prescription drug crimes, right? 6 A. I was the one that did the doctors, 7 not just prescriptions but just the doctors. 8 Q. Okay. So how many people are in 9 that unit, how many prosecutors? 10 A. Now? 11 Q. Yes. 12 A. Six. 13 Q. And of those six prosecutors, how 14 many focus on prescription opioid crimes? 15 A. I'm the one that does the 16 practitioners. 17 Q. Okay. So you focus on 18 practitioners. Do any of the other prosecutors 19 focus on prescription opioid prosecutions? 20 A. There's a prosecutor that does just 21 the nurses. 22 Q. And what is that prosecutor's name? 23 A. Right now it's -- I think it's Paul 24 Soucie. I did nurses for years until I handed 25 it off.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. And of those hundred prosecutors, do 2 you know how many focus on crimes related to 3 prescription opioids? 4 A. You say "focus," ma'am. That's 5 disingenuous because they take all cases that go 6 into certain courtrooms. Now, some of the cases 7 could be -- have prescriptions, but nobody 8 focuses just on that particular area, okay. 9 Q. Okay. I'm asking you questions. 10 I'm not intending to communicate statements or 11 be disingenuous, so my question was whether or 12 not they focus on it, and if they don't focus, 13 you can go ahead and tell me that. 14 A. And I'm telling you the word that 15 you used, "focus," is inappropriate as far as 16 the question you're asking me, because nobody 17 focuses just on prescription drugs in general 18 felony, okay. It's part of their job. 19 Q. I will rephrase my question. 20 A. Okay. 21 Q. Of the hundred plus prosecutors in 22 the general felony unit, how many focus, not 23 necessarily exclusively, on crimes related to 24 prescription opioids? 25 A. I don't know.</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 Q. How does the number of prescription 3 opioid crimes prosecuted by your office in the 4 late 1990s compare to the early 1990s?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. I couldn't quantify that for you.</p> <p>7 Q. Am I correct that you noticed a 8 surge in prescription drug crime in the late 9 1990s?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I noticed a surge in the -- in 12 the -- what's the word I'm looking for -- in the 13 wanting of a certain drug, which was OxyContin.</p> <p>14 Q. And what sources of data informed 15 you of that?</p> <p>16 A. Again, just my experience of talking 17 to the officers on the streets.</p> <p>18 Q. Which specific officers did you 19 speak to?</p> <p>20 A. Back in the '90s?</p> <p>21 Q. Yes.</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. There were individuals that are 24 retired now. I could give you some names of 25 people that worked back in the '90s. Bob Cole,</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. Did your office increase the number 3 of prosecutors to address the increase?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. And in the years that followed, in 6 the early 2000s, are you aware of whether the 7 number of prosecutors intended to work on 8 prescription drug crimes increased?</p> <p>9 MR. SPELLACY: Objection.</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Are you aware of any other steps 12 your office took at that time to deploy 13 resources toward prescription opioid work?</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 A. Not that I know of.</p> <p>16 Q. When you first learned about the 17 issues with OxyContin and other prescription 18 drugs, with whom did you discuss your concerns 19 within your office?</p> <p>20 A. It would be my immediate supervisor.</p> <p>21 Q. And who was that at the time?</p> <p>22 A. Paul Soucie.</p> <p>23 Q. Did you discuss your concerns 24 outside your office?</p> <p>25 A. Just with the investigators that I</p>
<p style="text-align: right;">Page 59</p> <p>1 who was a diversion supervisor of the pharmacy 2 board, Jim Rye, Lynn Mudra. Those are the names 3 that come to my mind.</p> <p>4 Q. And who did Jim Rye work with?</p> <p>5 A. All pharmacy board investigators.</p> <p>6 Q. Apart from those three individuals, 7 were there any other sources that you recall 8 speaking with?</p> <p>9 A. Yeah, but I don't know their names.</p> <p>10 Local law enforcement people.</p> <p>11 Q. How many such people --</p> <p>12 MR. SPELLACY: Objection.</p> <p>13 Q. -- approximately?</p> <p>14 A. I'd say a handful.</p> <p>15 Q. And what steps did your office take 16 to deploy resources toward prescription drug 17 work in the late 1990s?</p> <p>18 MR. SPELLACY: Objection.</p> <p>19 A. The only thing I can tell you is if 20 we were doing a practitioner and we needed to 21 hire an expert, then we got money to hire an 22 expert.</p> <p>23 Q. Are you aware of any other resources 24 that were deployed in reaction to the surge in 25 prescription drug crime?</p>	<p style="text-align: right;">Page 61</p> <p>1 worked with.</p> <p>2 Q. And what were their names?</p> <p>3 A. Again, ma'am, I could tell you right 4 now I'm very bad with names, so the three that I 5 mentioned to you are the ones that stand out, 6 but I'm sure there's a handful of other 7 individuals that I worked with during that 8 period of time. I can't remember their names.</p> <p>9 Q. Understood.</p> <p>10 What would you say your office's 11 first efforts were in response to the 12 prescription drug crime?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. What period of time?</p> <p>15 Q. When your office first noticed the 16 prescription drug issue.</p> <p>17 MR. SPELLACY: Objection.</p> <p>18 A. Well, you're framing it -- your 19 question is framing -- you're assuming certain 20 things, okay. There has always been an issue 21 with drugs. There's always been an issue with 22 prescription drugs.</p> <p>23 Q. I see.</p> <p>24 A. There's always been an issue with 25 bad doctors, okay.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Even before the late 1990s?</p> <p>2 A. I would assume that.</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. I don't know. But I can tell you</p> <p>5 from this, from right now, all the way back,</p> <p>6 there's always been an issue, and the issue has</p> <p>7 been -- how should I say -- aggravated in the</p> <p>8 last three or four years because of all the dead</p> <p>9 bodies that are showing up.</p> <p>10 Q. And I want to make sure I'm</p> <p>11 understanding what you're saying. So when</p> <p>12 you're talking about the issue and it, what are</p> <p>13 you talking about?</p> <p>14 A. I'm talking about the issue became</p> <p>15 more of a crisis in the last three or four years</p> <p>16 because of the number of people that are dying.</p> <p>17 We didn't have these number of people dying in</p> <p>18 the late '90s and early 2000s, but from like</p> <p>19 2014, '15, all the sudden we're getting a ton of</p> <p>20 dead bodies, and we didn't have those dead</p> <p>21 bodies before.</p> <p>22 Q. Okay. When did you recall first</p> <p>23 bringing a prosecution against a doctor for</p> <p>24 unlawfully prescribing a prescription opioid to</p> <p>25 a patient who didn't need it?</p>	<p style="text-align: right;">Page 64</p> <p>1 A. For that opioid, okay. Again, in</p> <p>2 the early '90s.</p> <p>3 Q. And do you recall the defendant's</p> <p>4 name?</p> <p>5 A. No, I don't, ma'am.</p> <p>6 Q. When did you first bring a</p> <p>7 prosecution against an individual who stole a</p> <p>8 prescription opioid?</p> <p>9 A. Stole the prescription or the</p> <p>10 opioid?</p> <p>11 Q. Stole the prescription opioid drug.</p> <p>12 A. So somebody who stole an opioid</p> <p>13 drug?</p> <p>14 Q. Yes.</p> <p>15 A. He didn't get the drug and buy a</p> <p>16 prescription but he just got the opioid itself</p> <p>17 without the prescription?</p> <p>18 Q. Precisely.</p> <p>19 A. I would say in the early '90s, too.</p> <p>20 Q. When was the first time you brought</p> <p>21 a prosecution against an individual who</p> <p>22 illegally sold a prescription opioid?</p> <p>23 A. Again, in the early '90s.</p> <p>24 Q. And when was the first time you</p> <p>25 brought a prosecution against an individual who</p>
<p style="text-align: right;">Page 63</p> <p>1 A. I would say in the early '90s.</p> <p>2 Q. Do you recall a specific case?</p> <p>3 A. No, I don't, because I -- I've done</p> <p>4 so many doctors, I only can remember a couple.</p> <p>5 Q. When did you first bring a</p> <p>6 prosecution against an individual who forged a</p> <p>7 prescription opioid, if you have ever done so?</p> <p>8 A. Yeah, I've done that. I would say,</p> <p>9 again, in the early '90s.</p> <p>10 Q. And do any defendant names come to</p> <p>11 mind?</p> <p>12 A. No.</p> <p>13 Q. When did you first bring a</p> <p>14 prosecution against an individual in possession</p> <p>15 of prescription opioids without a valid medical</p> <p>16 prescription --</p> <p>17 MR. SPELLACY: Objection.</p> <p>18 Q. -- if ever?</p> <p>19 A. You just -- could you repeat the</p> <p>20 question?</p> <p>21 Q. When, if ever, did you first bring a</p> <p>22 prosecution against an individual who was in</p> <p>23 possession of a prescription opioid who didn't</p> <p>24 actually have a valid prescription for that</p> <p>25 drug?</p>	<p style="text-align: right;">Page 65</p> <p>1 stole a prescription pad?</p> <p>2 A. I would say sometime in early '90s</p> <p>3 again.</p> <p>4 Q. When did -- do you recall the</p> <p>5 defendant's name --</p> <p>6 A. No, I don't.</p> <p>7 Q. -- in any of these?</p> <p>8 A. No, I don't, ma'am.</p> <p>9 Q. When did you first bring a</p> <p>10 prosecution against a pharmacy for illegally</p> <p>11 operating a pill mill?</p> <p>12 A. I've never prosecuted a pharmacy for</p> <p>13 operating a pill mill.</p> <p>14 Q. Okay. And what do you understand a</p> <p>15 pill mill to mean?</p> <p>16 A. My understanding of a pill mill is a</p> <p>17 doctor that writes prescriptions unlawfully on a</p> <p>18 regular and routine basis.</p> <p>19 Q. When did you first bring a</p> <p>20 prosecution, if ever, against a pharmacist for</p> <p>21 unlawfully dispensing prescription opioids?</p> <p>22 A. I've never prosecuted a pharmacist</p> <p>23 for opioids; for amphetamines but not opioids.</p> <p>24 Q. When did you first bring a</p> <p>25 prosecution, if ever, against a licensed</p>

<p style="text-align: right;">Page 66</p> <p>1 distributor of prescription drugs?</p> <p>2 A. Never have.</p> <p>3 Q. You mentioned that, as prescription</p> <p>4 drug crime increased, your office deployed</p> <p>5 resources enabling you to hire expert witnesses.</p> <p>6 A. In certain particular cases, yes.</p> <p>7 Q. Okay. What does your office</p> <p>8 otherwise do to respond to the prescription drug</p> <p>9 abuse in the county?</p> <p>10 A. We are --</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. We are reactive. We're not</p> <p>13 proactive. So when we get complaints regarding</p> <p>14 certain, mostly, doctors, or maybe a scrip ring</p> <p>15 who stole prescriptions, then we react, then we</p> <p>16 deploy resources to investigate and prosecute</p> <p>17 that case.</p> <p>18 Q. And, generally speaking, from whom</p> <p>19 do those complaints come?</p> <p>20 A. We have complaints that come from</p> <p>21 citizens, investigative agencies, specifically</p> <p>22 pharmacy board and local -- local diversion</p> <p>23 investigators in the Cleveland Police Department</p> <p>24 and/or suburban police when we get complaints.</p> <p>25 Q. Sitting here today, can you think of</p>	<p style="text-align: right;">Page 68</p> <p>1 In fact, that's their duty actually, obligation</p> <p>2 under the law.</p> <p>3 Q. And what is their duty under the</p> <p>4 law?</p> <p>5 A. They have to report to the pharmacy</p> <p>6 board any time they think there's a suspicious</p> <p>7 prescription, or law enforcement.</p> <p>8 Q. So we talked about a number of drugs</p> <p>9 today. Apart from the ones we've already</p> <p>10 discussed, cocaine, heroin, prescription</p> <p>11 opioids, what other drugs have been a problem in</p> <p>12 Cuyahoga County?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. Again, this is all from my personal</p> <p>15 perspective. I can't think of any.</p> <p>16 Q. Okay. I forgot we mentioned</p> <p>17 methamphetamine. Has that been a problem for</p> <p>18 the county?</p> <p>19 MR. SPELLACY: Objection.</p> <p>20 A. I would assume.</p> <p>21 Q. You don't know that to be the case?</p> <p>22 A. I don't do the street drugs, but I</p> <p>23 would assume that drug issues of that nature is</p> <p>24 always a problem for any urban setting.</p> <p>25 Q. Okay. Has marijuana been a problem</p>
<p style="text-align: right;">Page 67</p> <p>1 any proactive steps your office has taken in</p> <p>2 response to the prescription drug crime in the</p> <p>3 county?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. Could you get more specific? I</p> <p>6 mean, I really -- that's a very broad question.</p> <p>7 Q. So I intend it to be broad because I</p> <p>8 do want to try to know throughout your</p> <p>9 experience if you recall any proactive measures</p> <p>10 your office took.</p> <p>11 A. Besides going out and teaching</p> <p>12 investigators how to do these cases, I can't</p> <p>13 think of anything.</p> <p>14 Q. In your experience, are you aware</p> <p>15 whether retail pharmacies have ever lodged</p> <p>16 complaints that --</p> <p>17 A. Yes.</p> <p>18 Q. To your office?</p> <p>19 A. Yes. We would get complaints from</p> <p>20 retail pharmacists about what they would think</p> <p>21 would be suspicious prescriptions, yes.</p> <p>22 Q. Approximately on how many such</p> <p>23 occasions?</p> <p>24 A. I couldn't quantitate that, but</p> <p>25 that's part of the reporting to us, pharmacists.</p>	<p style="text-align: right;">Page 69</p> <p>1 for the county in your experience?</p> <p>2 A. Again, I don't do the street drugs</p> <p>3 so I can't answer these questions, but just</p> <p>4 general knowledge, people would think there's a</p> <p>5 drug problem out there.</p> <p>6 Q. How about a drug called U-47700; are</p> <p>7 you familiar with that drug?</p> <p>8 A. No.</p> <p>9 Q. What other prescription drugs that</p> <p>10 are not opioids have posed a problem in Cuyahoga</p> <p>11 County?</p> <p>12 MR. SPELLACY: Objection.</p> <p>13 A. Well, the only thing I can tell you</p> <p>14 is what I've prosecuted, and I've prosecuted</p> <p>15 doctors for illegal prescriptions of</p> <p>16 phentermine.</p> <p>17 Q. What is phentermine?</p> <p>18 A. It's a stimulant that's used in</p> <p>19 weight loss, okay, and back in late 1989, when I</p> <p>20 did my first practitioner, that was amphetamines</p> <p>21 for weight loss, but that's not an issue now</p> <p>22 because you're not allowed to prescribe</p> <p>23 amphetamines for weight loss.</p> <p>24 Q. Have there been issues with</p> <p>25 prescription drug crimes related to Xanax?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Yes. 2 Q. Related to steroids? 3 A. Yes. 4 Q. Have you prosecuted any such cases? 5 A. Yes. 6 Q. What percentage of your caseload 7 relates to prescription drugs as opposed to 8 other economic-related crimes? 9 MR. SPELLACY: Objection. 10 A. I would say 15 to 20 percent of my 11 caseload. 12 Q. Currently, correct? 13 A. Yes. 14 Q. And of those prescription drug 15 crimes, what percentage relate to prescription 16 opioids as opposed to these other prescription 17 medicines? 18 MR. SPELLACY: Objection. 19 A. I would say 95 percent. I can give 20 you an example, okay. I haven't prosecuted 21 phentermine cases or diet cases until two years 22 ago, so from '89 until 2015, '16 there were no 23 cases that I saw regarding phentermines. It was 24 all opioids. So that's probably 99 -- 97 25 percent.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. How do you know that? 2 A. Dead bodies. 3 Q. Please elaborate. 4 A. Again, my understanding of what's 5 going on in the street in the last few years is 6 that because the opioids have been reduced on 7 the street, after people get addicted to the 8 opioids, they go to heroin, which is cheaper. 9 Q. And you mentioned that that 10 understanding is based on conversations that 11 you've had? 12 A. With the people on the front lines 13 that are out on the streets. 14 Q. And what type of people are you 15 talking about? Are you talking about police 16 officers? 17 A. And diversion investigators, yes. 18 Q. And with how many such individuals 19 have you discussed this topic? 20 A. A dozen, people that I work with 21 over the years. 22 Q. What types of heroin do you see on 23 the streets in Cuyahoga County? 24 A. I can't answer that question. I 25 don't do that.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Was your office prosecuting heroin 2 cases when you joined it 31 years ago? 3 A. 33, but yes. 4 Q. 33. I'm sorry. I don't want to 5 short-change you. 6 A. That's right. I'm an old guy. 7 Q. But it was prosecuting heroin cases? 8 A. I would assume, yes. 9 Q. Was it prosecuting heroin cases 10 prior to OxyContin's release in the late '90s? 11 MR. SPELLACY: Objection. 12 A. I didn't understand that question. 13 Q. Did your office continue to 14 prosecute heroin into the '90s? 15 A. Yes. 16 Q. And is your office continuing to 17 prosecute heroin crimes today? 18 A. I would assume, yes. 19 Q. Heroin has been around a long time, 20 correct? 21 A. Yes. 22 Q. Do you know how the use of heroin 23 has changed in your county over time? 24 A. It's become cheaper and more readily 25 accessible.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Do you know where the heroin -- what 2 is the source of the heroin on the streets in 3 Cuyahoga County? 4 MR. SPELLACY: Objection. 5 A. The only knowledge I have of that is 6 what I read in the paper. 7 Q. Do you have any knowledge, based on 8 your experience and your conversations with 9 colleagues, on how the potency of heroin on the 10 streets today compares to the potency of heroin 11 in the 1970s? 12 MR. SPELLACY: Objection. 13 A. No personal knowledge of that. 14 Q. Do you have any knowledge derived 15 from other conversations? 16 A. Yes. 17 Q. And what is your understanding? 18 A. That it's more powerful and cheaper. 19 Q. And how do you know that to be the 20 case? 21 A. Again, from media and talking to my 22 investigators. 23 Q. And in those conversations did you 24 also learn that international drug traffickers 25 are the primary source of the heroin problem in</p>

<p>1 Cuyahoga County?</p> <p>2 MR. SPELLACY: Objection.</p> <p>3 A. Again, just from what I read in the</p> <p>4 papers and see on TV.</p> <p>5 Q. Is that your understanding?</p> <p>6 A. That is my understanding.</p> <p>7 Q. Are you familiar with the "Let's</p> <p>8 Face Heroin" campaign?</p> <p>9 A. No.</p> <p>10 Q. Have you heard of it?</p> <p>11 A. No. First time I've heard of it.</p> <p>12 Q. Are you aware that between 2007 and</p> <p>13 2013 deaths caused by heroin rose by nearly 400</p> <p>14 percent according to your office?</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 A. I just know that dead bodies started</p> <p>17 to stack up in the last few years.</p> <p>18 Q. Do you know how the "Let's Face It</p> <p>19 -- "Let's Face Heroin" campaign is funded?</p> <p>20 MR. SPELLACY: Objection.</p> <p>21 A. No.</p> <p>22 Q. Do you know -- you've never heard of</p> <p>23 it so I won't go down this path.</p> <p>24 In the event that it is not clear,</p> <p>25 is the distribution of heroin a crime?</p>	Page 74	<p>1 Q. What percentage of the prescription</p> <p>2 opioid cases you work on also involve heroin?</p> <p>3 A. What percentage? That's hard to</p> <p>4 answer -- it really is -- because within cases</p> <p>5 people trade prescriptions itself or the</p> <p>6 prescription drugs itself for heroin. I've had</p> <p>7 a few of those cases. So I can't -- I can't</p> <p>8 really put a percentage on it.</p> <p>9 Q. Would you be able to approximate how</p> <p>10 many of your prescription drug prosecutions</p> <p>11 involve only prescription drugs and not some</p> <p>12 other drug like heroin?</p> <p>13 A. I would say 80 percent.</p> <p>14 Q. And you stated earlier you focus</p> <p>15 primarily on the medical professionals, like the</p> <p>16 doctors, and not on the individuals who might be</p> <p>17 selling these drugs on the street?</p> <p>18 A. Unless it's an organized</p> <p>19 prescription ring.</p> <p>20 Q. When did Cuyahoga County first begin</p> <p>21 prosecuting suppliers of heroin with involuntary</p> <p>22 manslaughter for overdose deaths?</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know whether Cuyahoga County</p>	Page 76
<p>1 A. Yes, it is.</p> <p>2 Q. Is the possession of heroin a crime?</p> <p>3 A. Yes, it is.</p> <p>4 Q. Do you know what the penalty range</p> <p>5 is for someone convicted of distributing heroin?</p> <p>6 And I'm sure it depends on the amount.</p> <p>7 A. It depends on the amount.</p> <p>8 Q. But not depending on the amount,</p> <p>9 what is the general --</p> <p>10 A. Well, you have five degrees of</p> <p>11 felonies, okay, in the State of Ohio, so if you</p> <p>12 have a low amount of heroin under a bulk amount,</p> <p>13 it's a felony 5. As you go -- have more, I</p> <p>14 assume it would go all the way up to a felony 1</p> <p>15 for Schedule 2 because that is a Schedule 2</p> <p>16 drug.</p> <p>17 Q. And that's for distribution?</p> <p>18 A. Yes.</p> <p>19 Q. How about for possession of heroin?</p> <p>20 How would the sentencing --</p> <p>21 A. It's the same way. It's all based</p> <p>22 on weight.</p> <p>23 Q. Do you know how many heroin-related</p> <p>24 cases your office prosecuted in 2017?</p> <p>25 A. No.</p>	Page 75	<p>1 has ever prosecuted an individual -- a supplier</p> <p>2 of heroin with manslaughter for an overdose</p> <p>3 death?</p> <p>4 A. I have no personal knowledge of</p> <p>5 that.</p> <p>6 Q. You have never prosecuted someone</p> <p>7 for manslaughter?</p> <p>8 A. Yes, I have.</p> <p>9 Q. Related to overdose of prescription</p> <p>10 opioids?</p> <p>11 A. Yes, I have.</p> <p>12 Q. In what case?</p> <p>13 A. That was the Dr. Dunifer case.</p> <p>14 Q. And when was that case?</p> <p>15 A. Geez, I don't know.</p> <p>16 Either late '90s or early 2000s.</p> <p>17 Q. Are you able to approximate how many</p> <p>18 cases you consider but decline to prosecute that</p> <p>19 involve prescription opioids?</p> <p>20 MR. SPELLACY: Objection.</p> <p>21 A. In my particular context, going</p> <p>22 after doctors, I can remember there have been</p> <p>23 two cases that we did not -- declined to</p> <p>24 prosecute after investigation.</p> <p>25 Q. Two cases total during your entire</p>	Page 77

<p style="text-align: right;">Page 78</p> <p>1 career with the office?</p> <p>2 A. Yes.</p> <p>3 Q. And why did you decline to prosecute</p> <p>4 those two cases?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. Because the evidence was not there.</p> <p>7 Q. Has your office ever -- have you</p> <p>8 ever declined to prosecute a crime involving</p> <p>9 prescription opioids due to resource issues?</p> <p>10 A. No.</p> <p>11 Q. Does your office issue a declination</p> <p>12 letter or any other record when it declines a</p> <p>13 case?</p> <p>14 A. Sometimes we do, depending if we</p> <p>15 talk -- if we have conversations with the</p> <p>16 attorney pre-indictment. If they want something</p> <p>17 in writing, we'll put it in.</p> <p>18 Q. Okay. And how are those letters or</p> <p>19 records maintained?</p> <p>20 A. They're in the Justice Matters</p> <p>21 system. Everything should be scanned in under</p> <p>22 that case.</p> <p>23 Q. And what about for cases prior to</p> <p>24 2009; how would those records or letters</p> <p>25 involving declinations be maintained?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. All I know is -- again, I'm not a</p> <p>2 pharmacist. I couldn't give you the -- all I</p> <p>3 know from general information is that when they</p> <p>4 cut heroin with fentanyl, it's a toxic mix.</p> <p>5 Q. Would you consider fentanyl and</p> <p>6 carfentanil to be a significant problem in the</p> <p>7 county?</p> <p>8 MR. SPELLACY: Objection.</p> <p>9 A. Again, you're asking me questions I</p> <p>10 can't really give an answer on because I don't</p> <p>11 do the street drugs.</p> <p>12 Q. So you don't have an opinion on the</p> <p>13 matter?</p> <p>14 A. I have an opinion, but, you know --</p> <p>15 Q. In your opinion, are fentanyl and</p> <p>16 carfentanil a significant problem for your</p> <p>17 county?</p> <p>18 MR. SPELLACY: Objection.</p> <p>19 A. Like all drugs, I think it is, yes.</p> <p>20 Q. When did you first recognize</p> <p>21 fentanyl to be a problem in your county?</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. I don't know.</p> <p>24 Q. Are you familiar with a case from</p> <p>25 2006 involving a defendant Melvin Edwards?</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I couldn't tell you. I would put</p> <p>2 things in the file, and whatever happened to the</p> <p>3 file happened to the file.</p> <p>4 Q. So in your practice, you would</p> <p>5 include any record of a declination inside the</p> <p>6 physical case file?</p> <p>7 A. Right, but I can tell you that</p> <p>8 rarely ever happened.</p> <p>9 Q. What's your understanding of what</p> <p>10 fentanyl is?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. I don't really have a biological</p> <p>13 understanding what the drug is; that it's just a</p> <p>14 drug that is used to cut heroin and it's really</p> <p>15 bad.</p> <p>16 Q. What's your understanding of what</p> <p>17 carfentanil is?</p> <p>18 A. That's even worse.</p> <p>19 Q. And by "worse," do you mean more</p> <p>20 potent?</p> <p>21 A. Yes.</p> <p>22 Q. And what's your understanding about</p> <p>23 the potency of fentanyl relative to heroin?</p> <p>24 MR. SPELLACY: Objection.</p> <p>25 Q. Is it more, less or the same?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. No. It doesn't ring a bell.</p> <p>2 Q. To your knowledge, that's not a case</p> <p>3 you worked on?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. I don't know. I could have,</p> <p>6 couldn't have. I don't know. I'd have to look</p> <p>7 at the file.</p> <p>8 Q. Would reviewing the indictment</p> <p>9 refresh your memory?</p> <p>10 A. It could.</p> <p>11 - - - - -</p> <p>12 (Thereupon, Gutierrez Deposition</p> <p>13 Exhibit 1, Melvin Edwards</p> <p>14 Indictment, Bates Numbered</p> <p>15 CUYAH_000020887 - Marked</p> <p>16 Confidential, was marked for</p> <p>17 purposes of identification.)</p> <p>18 - - - - -</p> <p>19 Q. I'm marking this as Exhibit 1. This</p> <p>20 appears to be the indictment of Melvin Edwards,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And does this Exhibit 1 refresh your</p> <p>24 memory as to whether you personally worked on</p> <p>25 this case?</p>

<p>1 A. I don't -- I don't know. Does that 2 refresh my recollection -- and I don't believe I 3 did, but I can't be for sure.</p> <p>4 Q. Okay. But this does appear to be an 5 indictment of a case brought by your office 6 against a defendant for illegal fentanyl 7 distribution, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And it's dated October 5th, 2006?</p> <p>10 A. That is correct.</p> <p>11 Q. That's all I have for that document.</p> <p>12 To your knowledge, has fentanyl use 13 in your county changed over time?</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 A. I don't know that.</p> <p>16 Q. Are you familiar with something 17 called Ohio Drug Overdose Data Findings Report?</p> <p>18 A. No.</p> <p>19 - - - - -</p> <p>20 (Thereupon, Gutierrez Deposition 21 Exhibit 2, Multi-Page Document 22 Entitled "2015 Ohio Drug Overdose 23 Data General Findings," Beginning 24 Bates Number CUYAH_011231985 - 25 Marked Confidential, was marked for</p>	Page 82	<p>1 statement correctly in a document he's never 2 seen before?</p> <p>3 You can answer the question.</p> <p>4 A. So you're in the first bullet point?</p> <p>5 Q. Yes.</p> <p>6 A. Yes, I see that sentence.</p> <p>7 Q. Okay. And based on your experience, 8 do you have any reason to disagree with the 9 finding in that report regarding the fentanyl --</p> <p>10 A. I don't have any personal knowledge 11 of this, so I -- so I can't -- how do you want 12 me to answer that? Do you want me to agree to 13 something I don't know about?</p> <p>14 Q. I'm just trying to understand 15 whether or not you have a basis to agree or 16 disagree with that statement.</p> <p>17 A. I do not have a basis one way or the 18 other.</p> <p>19 Q. Okay. In your experience as a 20 prosecutor -- and I'm not referring to the 21 document now.</p> <p>22 A. Okay.</p> <p>23 Q. -- are you aware of instances in 24 which a drug dealer has mixed heroin with 25 carfentanil or fentanyl?</p>	Page 84
<p>1 purposes of identification.)</p> <p>2 - - - - -</p> <p>3 Q. Handing you what has been marked as 4 Exhibit 2 -- that's a report I just referenced 5 -- you don't receive these types of reports in 6 the regular course of your business?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. No, I do not.</p> <p>9 Q. This is a report dated 2015, and on 10 that first page it notes a significant rise in 11 fentanyl-related overdose deaths.</p> <p>12 A. Yes, I see that.</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 Q. And if I could just direct your 15 attention to that first bullet point there in 16 the center of the page. It reads, 17 "Fentanyl-related unintentional drug overdose 18 deaths in Ohio more than doubled from 503 in 19 2014 to 1,155 in 2015."</p> <p>20 Did I read that correctly?</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. Where you at?</p> <p>23 Q. The bullet point in the center of 24 the page, the very first bullet point.</p> <p>25 MR. SPELLACY: Have you read the</p>	Page 83	<p>1 A. I have never worked on a case like 2 that, but I know there are cases out there.</p> <p>3 Q. Are you aware of fentanyl or 4 carfentanil also being mixed with cocaine?</p> <p>5 A. Yes.</p> <p>6 Q. You've heard of that happening?</p> <p>7 A. Yes.</p> <p>8 Q. Are you aware that there was a spike 9 in the mix of cocaine and fentanyl in 2016 in 10 your county?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. I don't know that.</p> <p>13 Q. Are you aware that in 2016 roughly 14 half of cocaine overdose deaths contained 15 fentanyl?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. I don't know that.</p> <p>18 Q. What do you understand, based on 19 your conversations and in your work experience, 20 are the risks of mixing carfentanil with another 21 drug?</p> <p>22 A. Well, carfentanil, you can have just 23 a little speck and that will kill you, so 24 carfentanil is extremely potent. Mixed with 25 anything it could be deadly.</p>	Page 85

<p style="text-align: right;">Page 86</p> <p>1 Q. And in your experience and based on 2 what you've learned from colleagues, are there 3 situations where drug users are unaware that 4 carfentanil is actually included in the drug 5 they're ingesting?</p> <p>6 MR. SPELLACY: Objection.</p> <p>7 A. I don't know that.</p> <p>8 Q. You haven't heard of that happening?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of instances in which 11 a drug dealer has disguised fentanyl as a 12 prescription opioid?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. No.</p> <p>15 Q. You haven't heard of that?</p> <p>16 A. Never heard of that one.</p> <p>17 Q. Are you aware of counterfeit pills 18 containing fentanyl being sold in Cuyahoga 19 County?</p> <p>20 A. No.</p> <p>21 Q. Are you aware of counterfeit 22 prescription drug pills being sold in Cuyahoga 23 County?</p> <p>24 A. Previously I have, yes.</p> <p>25 Q. And that's a crime, right?</p>	<p>1 you're asking these broad questions, and in 2 specific instances I know previously in some 3 cases that I've had the police officer didn't 4 indicate to me they had any problems detecting 5 that pill is not a real OxyContin pill, for 6 example.</p> <p>7 Q. Are you aware that the majority of 8 fentanyl death reports result from illegally 9 produced and trafficked fentanyl, not from 10 diverted pharmaceutical fentanyl?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. I don't know that for a fact.</p> <p>13 Q. Is the sale of fentanyl and 14 carfentanil a crime?</p> <p>15 A. Yes.</p> <p>16 Q. Has your office prosecuted the sale 17 of fentanyl or carfentanil?</p> <p>18 A. Again, that's a different division. 19 I would assume that they have.</p> <p>20 Q. Do you know which prosecutor or 21 prosecutors have prosecuted cases involving 22 fentanyl or carfentanil?</p> <p>23 A. We have a major drug unit. They do 24 those cases.</p> <p>25 Q. Can you think of any specific</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Absolutely.</p> <p>2 Q. How difficult is it for law 3 enforcement to detect counterfeit pills at the 4 scene of an overdose?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. I'm not a police officer. I 7 couldn't answer that.</p> <p>8 Q. Based on your conversations with 9 your colleagues and with police officers, do you 10 have any appreciation of the difficulty in 11 attempting to detect a counterfeit pill?</p> <p>12 A. In my experience, my investigators 13 are very experienced, so they can detect a 14 counterfeit drug pretty easily, a pill.</p> <p>15 Q. And who are those investigators?</p> <p>16 A. Again, the individuals that I work 17 with.</p> <p>18 Q. The three individuals you previously 19 named who work with the Board of Pharmacy?</p> <p>20 A. Yes, and the people now that I work 21 with, Board of Pharmacy and the local police 22 that I work with.</p> <p>23 Q. And they told you they had an easy 24 time identifying counterfeit pills?</p> <p>25 A. No. Again, you're trying -- to me</p>	<p style="text-align: right;">Page 89</p> <p>1 prosecutors who you know have handled those 2 types of cases?</p> <p>3 A. Well, the people in the major drug 4 unit, Mark Boler and Pat -- I've only worked 5 with the guy for 30 years. I forgot his last 6 name. He's going to kill me.</p> <p>7 Q. That's okay. 8 Do you know the total number of 9 prosecutions your office has conducted that 10 involve fentanyl or carfentanil?</p> <p>11 A. No, I don't.</p> <p>12 Q. Do you know what the penalties are 13 for crimes involving fentanyl or carfentanil?</p> <p>14 A. I would generally speaking.</p> <p>15 Q. Generally --</p> <p>16 A. What the drug statutes are, what the 17 penalties are for drugs, and based on weight.</p> <p>18 Q. And what are those?</p> <p>19 A. Again, felony 5 through felony 1, 20 depending on the bulk amount.</p> <p>21 Q. Do you know what amounts might lead 22 to a particular sentencing range?</p> <p>23 A. Yes, bulk amounts. Legislature has 24 determined a certain amount of a drug is a bulk 25 amount. Once you get over a bulk amount, then</p>

<p>1 the penalties increase.</p> <p>2 Q. And do you know the bulk amounts for</p> <p>3 fentanyl?</p> <p>4 A. No, I don't.</p> <p>5 Q. Are you aware of any deaths linked</p> <p>6 to carfentanil?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. I -- no, I'm not aware of it.</p> <p>9 Q. How about fentanyl?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. Same answer.</p> <p>12 Q. I asked you earlier if you were</p> <p>13 familiar with a drug called U-47700.</p> <p>14 A. Correct.</p> <p>15 Q. And you said no.</p> <p>16 A. Correct.</p> <p>17 Q. Do you know whether it's a crime to</p> <p>18 possess or distribute U-47700 in Ohio?</p> <p>19 MR. SPELLACY: Objection.</p> <p>20 A. I have no knowledge of that, what</p> <p>21 that is, so I can't answer any questions on</p> <p>22 that.</p> <p>23 Q. Do you recall around May of 2016 the</p> <p>24 governor of the state taking action to ban a</p> <p>25 dangerous synthetic opioid called U-47700? Does</p>	<p style="text-align: right;">Page 90</p> <p>1 that were coming into Cuyahoga County for a</p> <p>2 couple of years.</p> <p>3 Q. And do you recall what the total</p> <p>4 number or what years it covered?</p> <p>5 A. No, I don't. I have those at my</p> <p>6 office somewhere.</p> <p>7 Q. If you wanted to know what total</p> <p>8 number of prescription drugs were coming into</p> <p>9 the county, who would you ask at the Board of</p> <p>10 Pharmacy?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. The compliance supervisor.</p> <p>13 Q. What is that person's name?</p> <p>14 A. Mark Griffin.</p> <p>15 Q. Are you familiar with something</p> <p>16 called OARRS?</p> <p>17 A. Yes.</p> <p>18 Q. What is OARRS?</p> <p>19 A. That is a data system that was, I</p> <p>20 think, started in about 2010 in the State of</p> <p>21 Ohio that tracks the prescriptions that are</p> <p>22 written by doctors and prescriptions that are</p> <p>23 gotten by individual patients.</p> <p>24 Q. Who has access to OARRS?</p> <p>25 MR. SPELLACY: Objection.</p>
<p>1 that refresh your memory?</p> <p>2 MR. SPELLACY: Objection.</p> <p>3 A. No.</p> <p>4 Q. Do you know how many opioid</p> <p>5 prescriptions were written for Cuyahoga County</p> <p>6 residents in 2018?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. No.</p> <p>9 Q. How about in any additional year?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I did get some numbers a year or two</p> <p>12 ago from the DEA -- or was it the pharmacy</p> <p>13 board -- no -- the pharmacy board -- about the</p> <p>14 number of prescriptions in Cuyahoga County.</p> <p>15 Q. So, to your knowledge, does the</p> <p>16 Board of Pharmacy have a way of tracking the</p> <p>17 total number of prescription opioid</p> <p>18 prescriptions in the county?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know how they track that?</p> <p>21 A. You know, I don't know if it's the</p> <p>22 Board of Pharmacy or DEA that I got those</p> <p>23 numbers from.</p> <p>24 Q. And what numbers were you provided?</p> <p>25 A. Just the number of prescriptions</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Any -- what's the word I'm looking</p> <p>2 for -- authorized law enforcement agency.</p> <p>3 Q. Who else has access to OARRS?</p> <p>4 A. You have to be an authorized law</p> <p>5 enforcement agency to look at OARRS.</p> <p>6 Q. Do doctors have access to OARRS?</p> <p>7 A. Yes.</p> <p>8 Q. Do pharmacies or pharmacists have</p> <p>9 access to OARRS?</p> <p>10 A. I don't know that, but I would</p> <p>11 assume they do.</p> <p>12 Q. Do drug distributors have access to</p> <p>13 OARRS?</p> <p>14 A. I don't know the answer to that</p> <p>15 question.</p> <p>16 Q. Do drug manufacturers have access to</p> <p>17 OARRS?</p> <p>18 A. I don't know the answer to that</p> <p>19 question.</p> <p>20 Q. Have you -- are you familiar with</p> <p>21 OARRS data? Have you seen it?</p> <p>22 A. Yes.</p> <p>23 Q. And what sort of data is contained</p> <p>24 in the OARRS database?</p> <p>25 A. The only data that I've seen from</p>

<p style="text-align: right;">Page 94</p> <p>1 OARRS are the prescription history of certain 2 patients, of doctors that we're looking at. 3 Q. Does OARRS tell you the patient 4 names? 5 A. Yes. 6 Q. And does it tell you the drugs that 7 those patients were prescribed? 8 A. Yes. 9 Q. And the quantities? 10 A. The prescription drugs, scheduled 11 drugs, yes. 12 Q. Does OARRS tell you where those 13 patients filled their prescriptions? 14 A. You know, I don't know the answer to 15 that question. 16 Q. Okay. On how many different 17 occasions have you had reason to gather OARRS 18 data in furtherance of your work? 19 A. Every time we look at a 20 practitioner, that's the first place we go. 21 Q. So more than a hundred times during 22 your investigations or less? 23 A. No. I would say under 20 in the 24 last five years. 25 Q. And is OARRS a database that you</p>	<p style="text-align: right;">Page 96</p> <p>1 A. That is a database that is -- that 2 is maintained and done by the DEA to track, I 3 believe, the number of drugs, prescription 4 drugs, that are in a certain jurisdiction. 5 Q. Do you rely on ARCOS data in 6 furtherance of your work? 7 A. No. 8 Q. Have you had occasion to request 9 access to ARCOS or data subsets of ARCOS data? 10 A. I think only in one instance did the 11 feds share that with me. 12 Q. Do you know who has access to ARCOS 13 data? 14 A. The DEA. 15 Q. Does anyone else have access to 16 ARCOS data? 17 A. I don't know the regs on the ARCOS. 18 Q. According to the complaint in this 19 action, according to ARCOS data, 700 -- 20 approximately 792 million opioid doses were 21 dispensed in Cuyahoga County. 22 A. What time frame? 23 Q. That is a good question. 24 A. Gotcha, huh? 25 Q. I was thinking the same thing.</p>
<p style="text-align: right;">Page 95</p> <p>1 might use proactively to decide who to 2 investigate or something that you use 3 reactively? 4 A. I know the pharmacy board does that. 5 They will look at OARRS and they will determine 6 whether a doctor is writing a large amount of 7 prescriptions. They have, I guess, a program to 8 do that. 9 Q. Does your office use it proactively 10 in that action? 11 A. Well, no. We get that report from 12 the investigators. 13 Q. Have you used OARRS data to support 14 criminal cases against doctors? 15 A. Yes. 16 Q. Apart from OARRS, what other types 17 of database has your office accessed to 18 determine the number of prescription opioids 19 prescribed and dispensed? 20 A. That's the only database that I 21 know. 22 Q. Are you familiar with a database 23 called ARCOS? 24 A. Yes. 25 Q. What is ARCOS?</p>	<p style="text-align: right;">Page 97</p> <p>1 We'll come back to that question. 2 To your knowledge, over the years 3 has anyone in your office or in the law 4 enforcement agencies with which you work tried 5 to figure out what percentage of the opioids, 6 prescription opioids, consumed in your county 7 were legitimately prescribed by a doctor for a 8 legitimate medical purpose? 9 MR. SPELLACY: Objection. 10 A. Not that I know of. 11 Q. And in cases involving death 12 overdoses, do you believe the county has any way 13 to determine whether the overdoses resulted from 14 legitimate versus illegitimate consumption of 15 prescription opioids? 16 MR. SPELLACY: Objection. 17 A. I believe that would be a contextual 18 thing based upon the facts of a particular case. 19 Q. During your 30(b)(6) deposition we 20 talked about some various forms of drug 21 diversion? 22 A. Um-hum. 23 Q. Including theft? 24 A. Um-hum. 25 Q. You mentioned doctor shopping?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. Um-hum. 2 Q. What is doctor shopping? 3 A. It's an individual who goes to 4 different doctors to get drugs and -- unlawfully 5 to get drugs. 6 Q. What are some other ways in which 7 the diversion of prescription opioids might 8 occur? 9 A. Stealing of the prescription pads. 10 Q. Okay. What else? 11 A. And distributing those prescription 12 pads. 13 Q. What else? 14 A. A doctor who's prescribing 15 illegally. 16 I can't think of any more off the 17 top of my head. 18 Q. What about forged prescriptions? 19 A. That goes in with the prescription 20 ring, yes. 21 Q. What about pill sharing, sharing 22 your medicine with a friend or a relative? 23 A. I really don't have any cases like 24 that. Technically, that's trafficking, but I 25 don't really have that many -- experience with</p>	<p style="text-align: right;">Page 100</p> <p>1 them -- 2 A. Um-hum. 3 Q. -- is it common for pills to pass 4 through multiple hands before reaching the end 5 user? 6 A. Not usually. Usually it's a retail 7 sale, as I call it. 8 Q. What is a retail sale? 9 A. I'm selling to you and you're buying 10 it to consume as opposed to me selling it to him 11 and then him selling it to you. He'll be the 12 wholesaler. 13 Q. In your experience, what type of 14 people engage in the illicit sale of illicit 15 drugs? 16 MR. SPELLACY: Objection. 17 A. What do you mean, what type of 18 people? 19 Q. Do you see street gangs involved in 20 this type of crime? 21 A. No. 22 Q. Do you see other organized crime 23 involved in this type of crime? 24 A. No. Any organized crime, I mean, 25 you have individuals that are organized together</p>
<p style="text-align: right;">Page 99</p> <p>1 those type of cases. 2 Q. What about internet sales? 3 A. I did, but not on opioids. That was 4 on steroids, internet sales. 5 Q. In your office's experience, when 6 diversion occurs, does the offender receiving 7 the prescription drug typically intend to use 8 them personally or to sell them for profit? 9 MR. SPELLACY: Objection. 10 A. Both. Depends on the context. 11 Q. Do you see one scenario more often 12 than the other? 13 MR. SPELLACY: Objection. 14 A. I -- as opposed to somebody 15 self-medicating as opposed to them trafficking 16 it? 17 Q. Um-hum. 18 A. More than the other; is that what 19 you're asking? 20 Q. Yes. Which is more common? 21 A. It's more common -- I can't really 22 answer that because it happens a lot, in both 23 instances, where I get people that self-medicate 24 and people get the drugs to sell them. 25 Q. For those who get the drugs to sell</p>	<p style="text-align: right;">Page 101</p> <p>1 in a ring to do these things. If you mean that, 2 yes. If you mean some type of cartel 3 involvement, no. 4 Q. Have you worked cases in which 5 individuals were organized in a ring like you 6 described? 7 A. Yes. 8 Q. How many such cases have you worked? 9 A. Dozens. 10 Q. And, generally, what is the nature 11 of that drug ring? How does it usually work? 12 A. You usually have somebody inside a 13 medical office or a medical facility who has 14 access to blank prescriptions, and they will 15 then -- they will then steal the prescriptions. 16 And then you have to have the ability to be able 17 to fill those out correctly. And then you have 18 to have the ability to then have people what we 19 call bust those, cash those scrips in. So you 20 have individuals who organize each individual's 21 role in doing that. 22 Q. Okay. So the person who stole the 23 prescription pad committed a crime, right? 24 A. Yes. 25 Q. And then the person who forged the</p>

<p style="text-align: right;">Page 102</p> <p>1 prescriptions committed a crime?</p> <p>2 A. Correct.</p> <p>3 Q. And then the individuals that they</p> <p>4 enlist to go about to different pharmacies to</p> <p>5 fill the prescriptions commit crimes?</p> <p>6 A. Correct.</p> <p>7 Q. And then the recipients of the</p> <p>8 prescriptions, who give them or sell them to</p> <p>9 other individuals, also committed a crime?</p> <p>10 A. Yes.</p> <p>11 Q. So in that situation, you would have</p> <p>12 kind of layers of criminal activity by</p> <p>13 multiple --</p> <p>14 A. That's why we use the RICO statute</p> <p>15 in those situations.</p> <p>16 Q. You do use the RICO statute?</p> <p>17 A. Yes, we do.</p> <p>18 Q. How many such cases have you</p> <p>19 prosecuted involving RICO?</p> <p>20 MR. SPELLACY: Objection.</p> <p>21 A. Quite a few.</p> <p>22 Q. More than two?</p> <p>23 A. Oh, yeah.</p> <p>24 Q. More than ten?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 A. When you put these words out like</p> <p>3 "significant," I would say yes, that's an issue.</p> <p>4 Q. And how has it changed over time, if</p> <p>5 you know?</p> <p>6 A. In my view, it's gotten worse,</p> <p>7 especially in the last few years.</p> <p>8 Q. When did you notice it getting</p> <p>9 worse, what year?</p> <p>10 A. '15; '14, '15, somewhere in there.</p> <p>11 Q. And what is the basis for your</p> <p>12 observations on this point?</p> <p>13 A. Because people are dying.</p> <p>14 Q. Have you reviewed death statistics?</p> <p>15 A. I've had cases where we've had</p> <p>16 overdose deaths because of prescription drugs.</p> <p>17 Q. Okay. And I'm asking these</p> <p>18 questions to try to understand if your answers</p> <p>19 -- and it's perfectly fine -- if your answers</p> <p>20 are related to your personal experience working</p> <p>21 individual cases or if the basis of your</p> <p>22 knowledge is from research or statistics or some</p> <p>23 other data.</p> <p>24 A. My working on my cases.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. And these are cases involving</p> <p>2 prescription opioids?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall the names of any of</p> <p>5 the defendants in those cases?</p> <p>6 A. Not -- I just did a few recently,</p> <p>7 the last year or two. I can't remember the</p> <p>8 names.</p> <p>9 Q. Generally speaking, when you're</p> <p>10 prosecuting a ring, is there going to be a</p> <p>11 doctor or a medical professional involved in the</p> <p>12 ring?</p> <p>13 A. Most of the time in that type of</p> <p>14 situation the doctor is the victim of the crime</p> <p>15 because the prescription pads are being stolen</p> <p>16 from him. We have to eliminate that right away</p> <p>17 to make sure that the doctor is not involved in</p> <p>18 doing those things.</p> <p>19 Q. And although, I believe you said,</p> <p>20 you generally focus on doctors and medical</p> <p>21 professionals, you would still nonetheless</p> <p>22 prosecute these more complex RICO cases?</p> <p>23 A. Yes, exactly.</p> <p>24 Q. Is there significant opioid</p> <p>25 diversion in Cuyahoga County?</p>	<p style="text-align: right;">Page 105</p> <p>1 I want to ask you about some of the</p> <p>2 specific cases that you prosecuted over the</p> <p>3 years, your office I should say, so let's start</p> <p>4 with pill mills.</p> <p>5 A. Okay.</p> <p>6 Q. How can you tell the difference</p> <p>7 between a pill mill and a legitimate pain clinic</p> <p>8 or medical office? What are the indicators?</p> <p>9 A. Well, first of all, you mentioned</p> <p>10 something. You have to get the context of what</p> <p>11 the medical provider is doing. Is he a general</p> <p>12 practitioner? Is he a pain management doctor?</p> <p>13 So that's the first thing.</p> <p>14 The second thing is then we go to</p> <p>15 OARRS and we look at the prescription pattern,</p> <p>16 the type of prescriptions, the combination of</p> <p>17 prescriptions, because you have to have a</p> <p>18 pattern to be able to prosecute practitioners.</p> <p>19 It's very difficult to prosecute a practitioner</p> <p>20 in a singular situation.</p> <p>21 Q. Okay. Are you aware of pill mills</p> <p>22 that operated in Cuyahoga County within the last</p> <p>23 20 years?</p> <p>24 A. Yes.</p> <p>25 Q. How many approximately?</p>

<p style="text-align: right;">Page 106</p> <p>1 MR. SPELLACY: Objection. 2 A. 20, 25. 3 Q. And can you identify them by name 4 for us? 5 A. No. The only one I can tell you is 6 the last one I did was Dr. Lalli. 7 Q. Dr. -- how do you spell his name? 8 A. I think L-a-l-l -- it's either I or 9 Y. I'm not sure. 10 MR. SPELLACY: I think it's I. 11 Q. Do you know the name of Dr. Lalli's 12 clinic? 13 A. No. 14 Q. Do you recall any other names of the 15 pill mills that you've prosecuted in the past 16 for your office? 17 A. How many years back? 18 Q. Past 20 years. 19 A. Well, there's the big ones, because 20 there's little ones and big ones. So, I mean, 21 Dr. Smirnoff was one of them. I can't remember 22 the names. I'm sorry. I just can't remember 23 names. I have very bad short-term memory. 24 Q. In your experience, when these pill 25 mills were detected and prosecuted, were they</p>	<p style="text-align: right;">Page 108</p> <p>1 mills. Can you estimate for me approximately 2 when those different pill mills were in 3 operation in the county? 4 MR. SPELLACY: Objection. 5 Q. And what I'm trying to get at, is 6 there a trend or a time period in which you saw 7 more pill mills in operation than at other times 8 during that 20-year window? 9 MR. SPELLACY: Objection. 10 A. That's a hard question to answer 11 because to me the issue has always been 12 significant. It's just a matter of, again, 13 we're always reactive instead of proactive. As 14 we speak right now, there are doctors out in the 15 county that are high writers. 16 Q. So you can't kind of put into a time 17 context any sort of, like, surge in pill mills 18 or -- 19 A. There's been a surge in the last, I 20 would say, three or four years in the 21 prescription rings that I have done. I've seen 22 that. 23 Q. In the last three or four years you 24 said? 25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 well known in the community? 2 MR. SPELLACY: Objection. 3 A. I don't know what you mean by that. 4 Were they well known within the people that are 5 seeking drugs out in the street? Yes, everybody 6 knows who the high writers are; yes. 7 Q. And were they known to law 8 enforcement as conducting suspicious business 9 practices even before you determined that they 10 were, in fact, breaking the law with respect to 11 prescription opioids? 12 MR. SPELLACY: Objection. 13 A. I don't know. I mean, that's a -- 14 again, you're asking all these general 15 questions. When we find out about things, then 16 we act on them. 17 Q. How did you generally find out about 18 pill mills operating? 19 A. Complaints. Pharmacists, citizens 20 basically that will come to law enforcement and 21 then law enforcement comes to me. 22 Q. And I know it's difficult because 23 you've been with the office so long and I'm 24 asking you about the past 20 years, and there 25 have been a number -- you said about 20 -- pill</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Are you aware of any pill mills that 2 operated outside the county that catered to the 3 county's residents? 4 A. No. 5 Q. And in your experience prosecuting 6 these cases, who was it that generally operated 7 the pill mills? Were they generally operated by 8 a doctor? 9 A. Yes. It's usually a sole 10 practitioner. 11 Q. Who has the authority to stop a pill 12 mill from operating in Cuyahoga County? 13 A. I don't know what you mean by that. 14 Q. Who can shut down a pill mill? 15 A. Law enforcement. 16 Q. And what specific law enforcement 17 agencies have that authority? 18 A. Everyone. Every law enforcement 19 agency in the State of Ohio is tasked with 20 enforcing the drug laws. 21 Q. Can the Board of Pharmacy shut down 22 a pill mill? 23 A. They need local law enforcement help 24 to do that. 25 Q. And what about the medical board;</p>

<p>1 can they shut down a pill mill?</p> <p>2 A. I don't know what you mean by that.</p> <p>3 They have certain administrative things that</p> <p>4 they can do.</p> <p>5 Q. Can they revoke or suspend the</p> <p>6 doctor's license?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. That's in their purview, yes, but</p> <p>9 they have to establish wrongdoing first.</p> <p>10 Q. I want to ask you some questions</p> <p>11 about Ronald Celeste.</p> <p>12 A. Yeah. That's right. There you go.</p> <p>13 There was one. I think he's still in jail.</p> <p>14 Q. Who is Dr. Celeste?</p> <p>15 A. Was a doctor on the west side of</p> <p>16 Cleveland.</p> <p>17 Q. And is he a doctor that you</p> <p>18 prosecuted?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Was he convicted?</p> <p>21 A. Yes. He -- he pled guilty.</p> <p>22 Q. And was he a doctor that was accused</p> <p>23 of operating one of these pill mills we've been</p> <p>24 discussing?</p> <p>25 A. That is correct.</p>	<p>Page 110</p> <p>1 going to hand you Exhibit 3 --</p> <p>2 A. Okay.</p> <p>3 Q. -- which is a news article about the</p> <p>4 case.</p> <p>5 A. Right. Yeah, I've seen this before.</p> <p>6 Q. Okay. You've seen this document</p> <p>7 before?</p> <p>8 A. Um-hum.</p> <p>9 Q. So according to the news article, in</p> <p>10 the middle of the page, "Celeste was indicted</p> <p>11 September 19th, 2013, on 226 counts of drug</p> <p>12 trafficking and illegal processing of drug</p> <p>13 documents in Cuyahoga County Common Pleas</p> <p>14 Court"; is that correct?</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 A. Sounds about right.</p> <p>17 Q. And the article goes on to state</p> <p>18 that, "According to the Cuyahoga County</p> <p>19 Prosecutor's Office" -- that's your office?</p> <p>20 A. Um-hum.</p> <p>21 Q. -- "Celeste wrote more than 33,000</p> <p>22 prescriptions for controlled substances from</p> <p>23 2009 through 2011."</p> <p>24 A. Um-hum.</p> <p>25 Q. In your opinion, did Dr. Celeste</p>
<p>Page 111</p> <p>1 Q. What were the general allegations</p> <p>2 against Dr. Celeste?</p> <p>3 A. He was indiscriminately prescribing</p> <p>4 opiate drugs to his patients.</p> <p>5 Q. What was he charged with?</p> <p>6 A. Trafficking, and a number of other</p> <p>7 things, I would assume. I'd have to look at the</p> <p>8 indictment, but basically trafficking.</p> <p>9 Q. Do you recall how many prescriptions</p> <p>10 he wrote?</p> <p>11 A. I'd have to go back to the case</p> <p>12 file, but it was a lot.</p> <p>13 Q. Does it sound right that he would</p> <p>14 have been indicted December 19th, 2013?</p> <p>15 A. If you showed me the document, I</p> <p>16 could tell you.</p> <p>17 - - - - -</p> <p>18 (Thereupon, Gutierrez Deposition</p> <p>19 Exhibit 3, Article Entitled "Doctor</p> <p>20 Accused of Operating 'Pill Mill'</p> <p>21 Tells His Story," was marked for</p> <p>22 purposes of identification.)</p> <p>23 - - - - -</p> <p>24 Q. Fortunately, we were not produced a</p> <p>25 copy of the indictment of this matter, but I'm</p>	<p>Page 113</p> <p>1 contribute to the prescription opioid problem</p> <p>2 that your county is facing?</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. In fact, would you agree that he</p> <p>6 endangered not only his patients but also the</p> <p>7 citizens of Cuyahoga County?</p> <p>8 MR. SPELLACY: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. And he played a significant role in</p> <p>11 contributing to the prescription opioid</p> <p>12 problems?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. He was one of many individuals out</p> <p>15 there that were doing this.</p> <p>16 Q. Okay. Now, doctors who, like</p> <p>17 Celeste, over-prescribe, other doctors like him</p> <p>18 also are significant causes of the prescription</p> <p>19 opioid problems, right?</p> <p>20 A. Yeah. Put them all together and</p> <p>21 they make up the problem, yes.</p> <p>22 Q. Now, in this article, at the very</p> <p>23 bottom of that second page, going into the third</p> <p>24 page, Dr. Celeste -- you can go to the top of</p> <p>25 the third -- states that, "The real danger, I</p>

<p style="text-align: right;">Page 114</p> <p>1 feel, lies in the people who deceive the doctors 2 who are only trying to help their symptoms. 3 Those people are the parasites of society." 4 Do you agree with Dr. Celeste that 5 the patients are the real danger? 6 MR. SPELLACY: Objection. 7 A. No. 8 Q. Why not? 9 A. I believe that the people that you 10 are representing are the source of this problem. 11 Q. And by who do you mean when you 12 refer to the people we're representing? 13 A. The drug manufacturers and 14 distributors. 15 Q. Okay. And why do you say that? 16 A. Why? Because they have made 17 millions, if not billions of dollars of blood 18 money by ruining our community by putting all 19 these drugs available for doctors to prescribe. 20 They're the source of this problem. 21 Q. Let's shift gears for a moment here. 22 What do you know about this lawsuit? 23 A. When it first came out, I perused 24 it, and I knew some of the facts anyway about 25 it.</p>	<p style="text-align: right;">Page 116</p> <p>1 actual facts you know. As a former prosecutor, 2 facts matter. 3 So prior to this case, had you had 4 any involvement with my client, McKesson 5 Corporation? 6 A. Directly, no. 7 Q. Had you heard of McKesson 8 Corporation? 9 A. Oh, yeah. 10 Q. You had? 11 A. Oh, yeah. 12 Q. And what had you heard about 13 McKesson before? 14 A. I saw the nice 60 Minutes thing, how 15 McKesson was able to flex their muscle to defang 16 the DEA so they could weasel out of a criminal 17 investigation that was going on in another part 18 of the country. 19 Q. Okay. So you watched the 60 20 Minutes -- 21 A. Yes. 22 Q. And it formulated some views for 23 you? 24 A. Well, and then I -- go ahead. 25 MR. SPELLACY: Objection.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. So what do you know about it? 2 A. I know how the marketing -- the 3 marketing -- specifically so, that you guys 4 marketed these drugs and convinced everybody 5 somehow that drugs were good for long-term 6 therapy for pain. With all the medicine, all 7 the scientific research out there before that, 8 everybody knew that was not correct, but for 9 some reason you guys did the full court press 10 and had this nice marketing campaign, you wined 11 and dined doctors and you tried to convince the 12 medical community that all this was good stuff 13 to do. 14 Q. Have you read the complaint in 15 total? 16 A. No. Just perused it. 17 Q. Have you spoken to anyone about this 18 case other than counsel? 19 A. No. But these issues that I told 20 you about were discussed in a couple seminars 21 that I went to. 22 Q. Okay. So you just shared a general 23 understanding about the case. 24 A. Well, I knew that -- 25 Q. I want to understand better what</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. Are you aware that McKesson is an 2 185-year American company that employs 78,000 3 employees across the country? 4 A. Oh, they're a very rich and powerful 5 corporation, absolutely. 6 Q. Do you understand McKesson does not 7 manufacture any drugs? 8 A. I know they distribute them. 9 Q. Do you know they simply deliver 10 drugs from manufacturers to pharmacies pursuant 11 to prescriptions? 12 A. They don't simply do that. 13 Q. Do you understand it is McKesson's 14 job to make sure patients get prescription 15 medicine quickly, sometimes to treat 16 life-threatening illnesses, even if they live in 17 rural or hard-to-reach areas? Do you understand 18 that's the nature of McKesson's business? 19 A. I know the nature of McKesson's 20 business, like Cardinal and all these other 21 people, are to distribute the pharmaceutical 22 drugs that are manufactured. 23 Q. And you know that prescription 24 opioids make up less than 2 percent of 25 McKesson's sales?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. I don't know that. 2 Q. You don't know that? 3 A. No, I don't. 4 Q. Are you aware that my client 5 delivers tens of thousands of different 6 medicines to more than 40,000 pharmacy customers 7 across the country? 8 A. I'm not going to sit here and debate 9 that McKesson has some legitimate purposes, 10 okay, there's no doubt about that, and they 11 provide a valuable service to our country, but 12 -- 13 Q. You shared a personal belief that 14 McKesson, my client -- I believe -- I believe 15 you were referring to McKesson when you said 16 "you guys" is responsible for the opioid abuse 17 that's occurred in Cuyahoga County. 18 A. They contributed to it; yes, they 19 did. 20 Q. And as the basis for that belief, 21 you mentioned the 60 Minutes special? 22 A. Um-hum. 23 Q. What else is the basis for that 24 belief? 25 A. The few seminars that I went to,</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Why not? 2 A. Because the evidence isn't there. 3 Q. What evidence is missing? 4 MR. SPELLACY: Objection. 5 A. I'd have to -- I'd have to think 6 about that, but a civil action is probably more 7 appropriate because of the standard of proof and 8 things of that nature. 9 Q. In your opinion, Dr. Celeste 10 committed a crime, correct? 11 A. Absolutely. 12 Q. And he shouldn't be excused from the 13 crimes that he committed -- 14 A. No. 15 MR. SPELLACY: Objection. 16 Q. -- correct? 17 A. No. 18 Q. And it was not -- Dr. Celeste's 19 conduct began in 2009, correct? 20 A. Yes. 21 Q. Yet your office didn't charge him 22 until December 19th of 2013, correct? 23 A. Correct. 24 Q. And his office was raided in 25 September of 2012?</p>
<p style="text-align: right;">Page 119</p> <p>1 that was laid out specifically. In fact, the 2 allegations in the lawsuit that have been filed 3 were specifically talked about in the seminar 4 that I went to. 5 Q. Okay. And based on your knowledge, 6 what specifically did McKesson do wrong? 7 A. All the particular drug distributors 8 did something wrong in my view. They ignored 9 obvious things, suspicious drug orders, and they 10 shouldn't have shipped the drugs when things -- 11 I'll give an example. The example back to the 12 60 Minutes, where you have a small community in 13 West Virginia who -- you know, who have what, 14 5,000 people, and they get a million dosage 15 units given to them. That kind of stuff. Do I 16 know specifically how much McKesson did? No. I 17 just know they're one of the big drug 18 distributors. 19 Q. Have you ever investigated or 20 prosecuted a drug distributor? 21 MR. SPELLACY: Objection. 22 A. No, but I'd love to. 23 Q. You would love to? 24 A. Oh, it would be fun, but can't -- 25 can't do it, though.</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Correct. 2 Q. But he was permitted to continue 3 practicing medicine and prescribing opioids 4 until July of 2013, wasn't he? 5 MR. SPELLACY: Objection. 6 A. But he's presumed innocent until 7 found guilty. 8 Q. What efforts did your office make to 9 have his license suspended in light of the 10 evidence you collected? 11 A. That is not our role. That is an 12 administrative action to either suspend or 13 retain a license. Sometimes in the process of 14 plea negotiations, that will be part of a plea 15 negotiation, but the medical board is the one 16 that makes the final decision on that, unless 17 it's part of a plea. 18 Q. So you did not take action to 19 attempt to have his license suspended? 20 A. I don't know. I think -- I'd have 21 to look whether giving up his license was part 22 of the plea, and I think it was, but I'm not 23 sure. 24 Q. But I'm talking about the 25 intervening time in which he practiced while</p>

<p style="text-align: right;">Page 122</p> <p>1 your office and law enforcement authorities 2 conducted its two-year investigation. 3 A. It takes a long time to prosecute a 4 doctor. 5 Q. And during that time he continued to 6 write prescriptions for opioids? 7 A. That's something you would have to 8 talk to the medical board about. I can't do 9 anything about that until I convict him. 10 Q. What efforts did your office 11 undertake to warn or to contact Dr. Celeste's 12 patients during your investigation? 13 MR. SPELLACY: Objection. 14 A. Can't do that. We wouldn't do that 15 anyway. That would compromise the 16 investigation. 17 Q. So, to your knowledge, his patients 18 did not receive any warnings or contact from 19 your office? 20 A. No. 21 MR. SPELLACY: Objection. 22 Q. And in December of 2013, when he was 23 ultimately convicted after pleading guilty, what 24 efforts were taken by your office or law 25 enforcement to recover the prescription opioids</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Are you aware of any efforts by 2 anyone in your office to get the Board of 3 Pharmacy to shut down a pill mill or a pharmacy? 4 A. When we do investigation on the 5 practitioners, yes, as part of -- the ultimate 6 goal is to shut it down. 7 Q. And in the case of Dr. Celeste, did 8 your office work with the DEA in an attempt to 9 suspend or revoke Dr. Celeste's DEA 10 registration? 11 A. I'd have to go look back at the 12 file. I can't -- it could be or couldn't be. 13 I'd have to go look at the file. 14 Q. That's not something you do in every 15 case involving a doctor? 16 A. I notify the DEA and then they'll do 17 whatever administrative action they do. I'm not 18 part of it usually. Sometimes that is part of 19 the -- sometimes that is part of the plea, to 20 give up their DEA registration. And I remember 21 not recently, but back a while ago, when the guy 22 was out on bond, the doctor was out on bond, 23 that was part -- part of the thing, bond 24 condition, that he would have to give up his DEA 25 registration.</p>
<p style="text-align: right;">Page 123</p> <p>1 you believe were prescribed pursuant to his 2 criminal activities? 3 A. All the opioids were distributed and 4 used. We couldn't recover any of the opioids. 5 Q. Did you try? 6 A. That's silly. That's just a silly 7 question. 8 Q. Did you try? 9 A. No, because it's impractical and 10 silly. 11 Q. Apart from the Dr. Celeste case, are 12 you aware of other efforts by county officials 13 to try to get the medical board to suspend or 14 revoke doctors' licenses? 15 A. Could you repeat that question 16 again? 17 Q. Are you aware of efforts by county 18 officials, including those at your office, to 19 try to get the medical board to suspend or 20 revoke doctor licenses? 21 A. I can't answer that question. I can 22 only answer what I specifically know about my 23 particular cases. 24 Q. So you're not aware of any efforts? 25 A. Correct.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. When your office comes across a 2 defendant or a witness who is clearly addicted 3 to prescription opioids or has overdosed on 4 prescription opioids, do you try to figure out 5 who their doctor is so that you can warn the 6 doctor? 7 MR. SPELLACY: Objection. 8 A. Do we try to warn the doctor when we 9 know somebody is addicted on opioids, 10 prescription opioids? 11 Q. That's right. 12 A. I never have. 13 Q. Does your office have any policy 14 you're aware of about informing doctors in those 15 situations? 16 A. I'm not aware of any. 17 Q. Can you estimate the number of 18 prescription opioid doses that have been 19 distributed by pill mills to people in your 20 jurisdiction? 21 MR. SPELLACY: Objection. 22 A. For what period of time? 23 Q. Over the last 20 years. 24 A. Oh, my God. I couldn't even 25 estimate.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. Could you estimate how -- 2 A. It would be a lot. 3 Q. Could you estimate for last year? 4 A. I couldn't. It would be a lot. I 5 can't -- I don't have those numbers. 6 Q. It would be thousands and thousands, 7 correct? 8 MR. SPELLACY: Objection. 9 A. Yes. 10 Q. I mean, Dr. Celeste himself wrote 11 more than 33 prescriptions, and he's not the 12 only doctor involved in a pill mill that you 13 prosecuted, right? 14 A. Correct. 15 Q. Does anyone track that information; 16 that is, the number of doses distributed by pill 17 mills in your jurisdiction? 18 A. Maybe the DEA would. Our office 19 doesn't. Locally, no. We don't have the 20 resources for all that stuff. 21 Q. At some point did the legislature in 22 Ohio enact legislation that helped to deal with 23 the pill mill problem? 24 A. Yes. 25 Q. And what was that legislation?</p>	<p style="text-align: right;">Page 128</p> <p>1 or take them themselves. 2 Q. Okay. So, in your opinion, you've 3 found that piece of legislation to have a 4 positive effect on actually reducing the number 5 -- 6 A. Yes. 7 Q. -- of drug diversion? 8 A. But then it had the negative effect 9 of people using heroin and overdosing. 10 Q. Okay. When was that legislation 11 passed? 12 A. I'm not sure. Within the last four 13 years, I believe. 14 Q. And could the same thing have been 15 accomplished earlier if the legislature had 16 passed that law sooner? 17 MR. SPELLACY: Objection. 18 A. Boy, I can't speculate on that. I 19 mean, we can all sit here and think about laws 20 that should be passed that would help. But I 21 can't speculate on that. All I know is it did 22 have an effect. 23 Q. Do you believe it's important that 24 doctors are educated about prescribing opioids 25 responsibly?</p>
<p style="text-align: right;">Page 127</p> <p>1 A. They -- I'm not sure. The last 2 couple years they passed laws regarding how much 3 opioids can be distributed by one doctor in a 4 month, how much a doctor can give a patient -- I 5 think it's in 72 hours -- himself. And there's 6 a few other regulations that I'm not aware of, 7 but those -- and the suspicious drug orders, 8 that -- that distributors are supposed to flag 9 suspicious drugs and tell the pharmacy board. 10 Besides those -- 11 Q. What effect did that legislation 12 have on the pill mill problem in your county? 13 A. I think it reduced the number of 14 prescription opioid pills on the street, which 15 then led to, like I said before, them going to 16 heroin and fentanyl, which has caused, in my 17 opinion, the deaths in Cuyahoga County. 18 Q. And when you use phrases as a 19 prosecutor like prescription pills on the 20 street, are you talking about diverted pills? 21 A. Yes. 22 Q. Not pills that might be on the 23 street because you have a valid prescription? 24 A. No. I'm talking about people who 25 get pills in a scrip mill and either sell them</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Absolutely. 2 Q. And why is that important? 3 A. Because it will help the situation. 4 I've talked to doctor groups about this. 5 Q. You have? 6 A. Yes. 7 Q. And what sorts of advice have you 8 given them? 9 A. To be a doctor. 10 Q. What does that mean? 11 A. To do what doctors do. Doctors 12 have -- you know, there's this innate hostility 13 between, I believe, lawyers and doctors. 14 Doctors think that the government was trying to 15 legislate the way that they practice their 16 medicine. And my message to them was no. If 17 you do what you're supposed to be doing, acting 18 like a doctor and recording everything that you 19 do, and acting properly, you don't have an 20 issue. And opiates are appropriate in the 21 appropriate contexts. We want to treat pain. 22 We don't want people going around unnecessarily 23 having pain, but treating chronic pain with 24 opioids is a dead end. And they'll only be 25 prosecuted if they -- because you have to</p>

<p style="text-align: right;">Page 130</p> <p>1 understand, when you prosecute doctors, the ones 2 that we go after are the ones that are way in 3 left field. They're so far above the pale 4 that -- and so I try to show these doctors, 5 look, this is who we go after.</p> <p>6 Q. They're clearly criminals?</p> <p>7 A. Exactly, because it's kind of like 8 Dr. Celeste, who writes 13,000 prescriptions a 9 year for opioids.</p> <p>10 Q. So let me show you another -- ask 11 you some questions about another case.</p> <p>12 MR. SPELLACY: Counsel, we're going 13 to break for lunch at some point? What time are 14 you thinking?</p> <p>15 MS. WOODS: If I could just ask a 16 few questions about this case.</p> <p>17 MR. SPELLACY: Yeah. That's great.</p> <p>18 Q. So do you recall investigating a 19 case back in 1993 involving a urology resident 20 at the Cleveland Clinic named Sean Carey, who 21 ultimately ended up committing suicide before 22 the case?</p> <p>23 A. Yes. I remember that case. It was 24 tragic. It was very tragic. He went up in 25 Pennsylvania in his cabin and blew his brains</p>	<p style="text-align: right;">Page 132</p> <p>1 Yeah, I was right.</p> <p>2 Q. The first full paragraph states, "A 3 source knowledgeable about the probe said it 4 involved allegations that Carey had written 5 prescriptions for 26,000 dosage units of 6 Percocet, Vicodin and Tylenol-4, all narcotics, 7 in his wife's name during a two-year period."</p> <p>8 A. Um-hum.</p> <p>9 Q. Does that sound correct to you?</p> <p>10 A. Yes. I mean, again, I will rely on 11 this to answer your questions, but I would have 12 to go back to the file.</p> <p>13 Q. And in this situation it appeared as 14 though the individuals took great lengths to 15 evade law enforcement; namely, by having the 16 prescriptions filled at 62 different pharmacies 17 across three different counties?</p> <p>18 A. Um-hum.</p> <p>19 Q. Does that sound correct?</p> <p>20 A. Yes.</p> <p>21 Q. And, in your experience, when 22 individuals are attempting to divert 23 prescription opioids, do you sometimes see them 24 take evasive measures such as this?</p> <p>25 A. Oh, absolutely.</p>
<p style="text-align: right;">Page 131</p> <p>1 out after we searched his office.</p> <p>2 Q. And he was another doctor who was 3 prescribing opioids illegally, correct?</p> <p>4 A. Um-hum. That's amazing they dug 5 that case up. I forgot the guy's name.</p> <p>6 Q. In this case do you recall that he 7 was writing prescriptions in his wife's name 8 over a two-year period, approximately 26,000 9 prescriptions?</p> <p>10 A. I don't know the specific facts now. 11 I'd have to go back to the file and look at it.</p> <p>12 - - - - -</p> <p>13 (Thereupon, Gutierrez Deposition 14 Exhibit 4, Article Entitled "Clinic 15 Doctor In Drug Probe Takes Own Life; 16 Urology Resident Investigated for 17 Narcotics Prescriptions," Dated 18 April 8, 1993, was marked for 19 purposes of identification.)</p> <p>20 - - - - -</p> <p>21 Q. Okay. I'm handing you what's been 22 marked as Exhibit 4. This is a Plain Dealer 23 news article on the case.</p> <p>24 A. Right. This was on the front page 25 of the Plain Dealer. He went to Pennsylvania.</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. By using multiple different 2 pharmacies, for example?</p> <p>3 A. Absolutely, and out-of-state 4 pharmacies.</p> <p>5 Q. And out-of-state pharmacies?</p> <p>6 A. Oh, yeah.</p> <p>7 Q. Or certainly out-of-county 8 pharmacies?</p> <p>9 A. Oh, absolutely.</p> <p>10 Q. What other evasive tactics do you 11 see individuals use when they're attempting to 12 divert prescription opioids?</p> <p>13 A. Well, back then it was a lot easier 14 to do that because whoever is representing CVS 15 here now, if you go to CVS, CVS is going to know 16 if you filled a prescription out in Lake County 17 as opposed to Cuyahoga County. But that's -- 18 that's about it. They go to different 19 pharmacies so they don't get tracked. They go 20 to pharmacies -- certain pharmacies that will 21 fill the prescriptions more readily than others 22 at certain periods of the day, mostly at night, 23 so they can't call the doctor's office, for 24 example. Things of that nature, yes. So that's 25 your basic modus operandi of going to different</p>

<p>1 pharmacies.</p> <p>2 Q. And in this case there were, they</p> <p>3 said, 26,000 dosage units diverted. And am I</p> <p>4 correct that those pills were never recovered?</p> <p>5 A. That is correct.</p> <p>6 Q. In fact, Sheriff's Detective Veres</p> <p>7 said, "At this point we don't know what happened</p> <p>8 to the pills"?</p> <p>9 A. Correct.</p> <p>10 Q. And this was back in 1993?</p> <p>11 A. Correct.</p> <p>12 Q. Would you agree prescription opioids</p> <p>13 were a problem way back then --</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 Q. -- in 1993?</p> <p>16 A. Yes, they were a problem; yes.</p> <p>17 MS. WOODS: We can take a break now</p> <p>18 for lunch.</p> <p>19 THE VIDEOGRAPHER: Off the record,</p> <p>20 11:58.</p> <p>21</p> <p>22 (Luncheon recess had.)</p> <p>23</p> <p>24</p> <p>25</p>	Page 134	<p>1 And the DEA had kind of screwed up a</p> <p>2 case with him a few years back, so he decided to</p> <p>3 name his boat "Injection." So he was a very</p> <p>4 arrogant individual.</p> <p>5 Q. He owned a yacht?</p> <p>6 A. No. It was a boat.</p> <p>7 Q. A boat that he named "Injection"?</p> <p>8 A. Injection. And the jury liked to</p> <p>9 see that, too.</p> <p>10 Q. I can imagine that had some serious</p> <p>11 jury appeal.</p> <p>12 A. Um-hum.</p> <p>13 Q. What was wrong with the case or the</p> <p>14 investigation that the DEA had pursued against</p> <p>15 Dr. Smirnoff earlier?</p> <p>16 A. I'm not sure, but the DEA came to me</p> <p>17 in the middle '90s and said they had worked the</p> <p>18 case up and the U.S. Attorney's Office did not</p> <p>19 like it for whatever reason, and they wanted to</p> <p>20 know if I would do that case. And I said I</p> <p>21 would if we started from scratch, and we started</p> <p>22 from scratch.</p> <p>23 Q. Which U.S. Attorney's Office was</p> <p>24 that that had declined the case?</p> <p>25 A. Here. I couldn't tell you the</p>	Page 136
<p>1 THE VIDEOGRAPHER: On the record,</p> <p>2 12:39.</p> <p>3 -----</p> <p>4 AFTERNOON SESSION</p> <p>5 CONTINUED EXAMINATION OF</p> <p>6 JAMES A. GUTIERREZ, ESQ.</p> <p>7 BY MS. WOODS:</p> <p>8 Q. Okay. I want to pick up where we</p> <p>9 left off, discussing some of the cases you</p> <p>10 handled.</p> <p>11 So earlier today you mentioned a</p> <p>12 particular doctor you had prosecuted, Dr. George</p> <p>13 Smirnoff. Do you recall prosecuting him?</p> <p>14 A. Oh, yes.</p> <p>15 Q. What do you recall about that case?</p> <p>16 A. How brazen he was about doing what</p> <p>17 he was doing. For example, it got to the point</p> <p>18 where none of the pharmacies would fill his</p> <p>19 prescriptions, so he started to distribute them</p> <p>20 from his office himself. His office was in a</p> <p>21 building on 12th Street where a local TV station</p> <p>22 was, so actually on the 6 o'clock news you had</p> <p>23 people walking out of his office with bags</p> <p>24 full of Percocet and Vicodin, I mean bags. It</p> <p>25 was that brazen and blatant.</p>	Page 135	<p>1 specific reasons why. I don't know.</p> <p>2 Q. So you agreed to start from scratch</p> <p>3 an investigation into Dr. Smirnoff?</p> <p>4 A. Um-hum.</p> <p>5 Q. And who were the investigating</p> <p>6 agencies that worked on the case?</p> <p>7 A. DEA and the pharmacy board. And I'm</p> <p>8 not sure if CPD did or not. I'm not sure if</p> <p>9 there was a local on there. I'm not sure. I</p> <p>10 know DEA and the pharmacy board.</p> <p>11 Q. And was the Cleveland Police</p> <p>12 Department also involved?</p> <p>13 A. I'm not sure. They could have been.</p> <p>14 Q. And based on your recollection, did</p> <p>15 the investigation take approximately three years</p> <p>16 and conclude in September of 1999?</p> <p>17 A. That is when he pled guilty, but I</p> <p>18 think the investigation concluded earlier than</p> <p>19 that, and then there was some litigation time.</p> <p>20 I'm not sure, but it did take over a year to</p> <p>21 investigate the case.</p> <p>22 -----</p> <p>23 (Thereupon, Gutierrez Deposition</p> <p>24 Exhibit 5, Article Entitled "Doctor</p> <p>25 Accused of Giving Drugs For Sex</p>	Page 137

<p style="text-align: right;">Page 138</p> <p>1 Pleads Guilty 31 Times To End His 2 Trial," Dated September 28, 1999, 3 was marked for purposes of 4 identification.) 5 - - - - - 6 Q. So I'm going to hand you what has 7 been marked for identification as Exhibit 5. 8 This is a news article about Dr. Smirnoff's 9 case. 10 A. You guys got on Google, didn't you? 11 Q. This article is from the Plain 12 Dealer in Cleveland, Ohio. It's dated September 13 28th, 1999. And according to this article, 14 Dr. Smirnoff pleaded guilty to 31 counts of drug 15 trafficking, one count for each of the 16 plaintiffs prosecutors said became addicts. Is 17 that correct? 18 A. That's correct. 19 Q. And he was originally charged with 20 212 counts in the indictment that had been 21 handed down in February of 1998. Does that 22 sound correct? 23 A. It sounds about right. 24 Q. This article notes that "Witnesses 25 said that more than 100 patients a day passed</p>	<p style="text-align: right;">Page 140</p> <p>1 dealers in Cuyahoga County has been taken off 2 the streets." 3 Do you see that quote? 4 A. I would agree with that. 5 - - - - - 6 (Thereupon, Gutierrez Deposition 7 Exhibit 6, Article Entitled 8 "Prescription For Prison: Doctor's 9 Pill Practice Paid For Yacht, Seven 10 Mistresses," Dated October 12, 1999, 11 was marked for purposes of 12 identification.) 13 - - - - - 14 Q. Okay. I'm also going to show you 15 what has been marked for identification as 16 Exhibit 6. Exhibit 6 is another article about 17 the Dr. Smirnoff case. This is an article dated 18 October 12th, 1999 published in the Plain 19 Dealer. 20 A. Okay. 21 Q. Do you recall seeing this news story 22 around that time? 23 A. I would have to read it. 24 Q. Okay. 25 A. I know there were numerous articles.</p>
<p style="text-align: right;">Page 139</p> <p>1 through Dr. Smirnoff's office, some getting up 2 to 50 times the legal dosage of drugs in a 3 single prescription." 4 A. Um-hum. 5 Q. Does that accord with your memory of 6 the evidence against Dr. Smirnoff? 7 A. Yes. It was pretty outrageous. 8 Q. And, in fact, according to the 9 evidence, Dr. Smirnoff helped turn more than 30 10 people into addicts; is that correct? 11 MR. SPELLACY: Objection. 12 A. At least, yes. 13 Q. And you found that some of his 14 patients actually died from overdoses? 15 A. Yes. 16 Q. In fact, is it fair to call 17 Dr. Smirnoff one of the biggest drug dealers in 18 Cuyahoga County? 19 MR. SPELLACY: Objection. 20 A. He was one of the larger pill mills 21 in this county, yes. 22 Q. And, in fact, according to this 23 article, Cuyahoga County Prosecutor William D. 24 Mason, at the top of the second page, referred 25 to him, stating "Today one of the biggest drug</p>	<p style="text-align: right;">Page 141</p> <p>1 This was a very high profile case in the papers. 2 Q. According to this article, it does 3 mention that he owned that boat called 4 "Injection." That's on page 1 near the bottom. 5 And if you looked to page 2 of the 6 article, it cites some facts regarding the 7 evidence against Dr. Smirnoff, and it says, 8 "During the abbreviated trial, prosecutors 9 claimed that about 80 percent of his 3,000 10 patients were pill addicts who came to him 11 because he was easy." 12 Does that accord with your memory of 13 the evidence that was offered against 14 Dr. Smirnoff? 15 A. Generally speaking, yes. 16 Q. And that he kept at least 31 17 patients addicted to painkillers by prescribing 18 far more pills than legally allowable. 19 Does that also accord with what you 20 recall the evidence being? 21 A. Yes, ma'am. 22 Q. Additionally, according to this 23 article, prosecutors also said, but were 24 prohibited from alleging in court, that nine of 25 Smirnoff's patients died from overdoses of</p>

<p>1 prescription drugs.</p> <p>2 Do you remember that?</p> <p>3 A. Yes.</p> <p>4 Q. And why were you prohibited from</p> <p>5 alleging that nine of his patients died from</p> <p>6 these overdoses?</p> <p>7 A. Because I don't know if you realize</p> <p>8 how hard it is to prove manslaughter on a</p> <p>9 doctor.</p> <p>10 Q. So tell me --</p> <p>11 A. It's very difficult to do that.</p> <p>12 Q. Why is it so difficult?</p> <p>13 A. Because of the proximate cause</p> <p>14 factor, okay. So if the doctor gives you, for</p> <p>15 example, a vial full of Percocet and you're</p> <p>16 supposed to take them one a day and you take</p> <p>17 them all at once, is that the doctor's fault?</p> <p>18 Depending on the circumstances.</p> <p>19 I've only prosecuted one doctor case</p> <p>20 for manslaughter, and that was because the</p> <p>21 doctor had prior notice of an overdose of this</p> <p>22 patient and kept giving the drugs to the</p> <p>23 patient.</p> <p>24 Plus, if I remember the facts of</p> <p>25 this case, some of the patients were also taking</p>	<p>Page 142</p> <p>1 Q. In addition, when he was arrested,</p> <p>2 25 patients had to go to the emergency room or</p> <p>3 detox clinics because they had withdrawal</p> <p>4 symptoms and weren't able to obtain prescription</p> <p>5 drugs from other --</p> <p>6 A. That's not unusual when we take a</p> <p>7 pill mill out.</p> <p>8 Q. And is that what happened in the</p> <p>9 Dr. Smirnoff case?</p> <p>10 A. From general memory, yes.</p> <p>11 Q. And does that behavior indicate to</p> <p>12 you that the patients were likely addicted to</p> <p>13 the drugs that they were receiving?</p> <p>14 A. Yes. There's no doubt about it that</p> <p>15 they were getting -- that they were addicted.</p> <p>16 Q. Dr. Smirnoff was a doctor who was</p> <p>17 ingenious at covering his tracks, would you say?</p> <p>18 A. He thought he was and he really</p> <p>19 wasn't.</p> <p>20 Q. Eventually you got him?</p> <p>21 A. He was a man that -- you got to</p> <p>22 understand. When you prosecute doctors, you go</p> <p>23 to the medical records. The medical record is</p> <p>24 going to tell you the story. Either you're</p> <p>25 going to have a medical record that's hardly</p>
<p>Page 143</p> <p>1 some street drugs in combination with the</p> <p>2 opioids, so that also causes a proximate cause</p> <p>3 issue.</p> <p>4 Q. It complicates matters by suggesting</p> <p>5 that a different factor contributed to the</p> <p>6 death?</p> <p>7 A. Exactly. So really all the stars</p> <p>8 have to align perfectly for you to be able to</p> <p>9 convict a doctor for manslaughter for</p> <p>10 over-prescribing of drugs.</p> <p>11 Q. Okay. And just to make sure I</p> <p>12 understand, that's because if you have to show</p> <p>13 that doctor is responsible for the death, it</p> <p>14 becomes more complicating if you have other</p> <p>15 factors that could have contributed to the</p> <p>16 death?</p> <p>17 A. That's correct. That's why it's</p> <p>18 very rare for you to ever see anything like</p> <p>19 that. Do your research throughout the whole</p> <p>20 country. It's very rare that that happens.</p> <p>21 Q. Okay. But nonetheless, nine of his</p> <p>22 patients did die during that time period from --</p> <p>23 A. Yes, they did.</p> <p>24 Q. -- overdoses of prescription drugs?</p> <p>25 A. Absolutely.</p>	<p>Page 144</p> <p>1 documented, which shows he's not doing what he's</p> <p>2 supposed to, or you have something like</p> <p>3 Smirnoff, who writes up a ton of stuff on the</p> <p>4 medical record, thinks he's covering himself,</p> <p>5 but at the end of the day every patient still</p> <p>6 walked out with the drug. So no. A pill mill</p> <p>7 that size, there's no way around it because the</p> <p>8 numbers are always going to get you.</p> <p>9 Q. Okay. According to that Exhibit 6</p> <p>10 that I gave you, at the bottom of page 2 it</p> <p>11 states that the investigation took three years</p> <p>12 and three agencies, the Drug Enforcement</p> <p>13 Administration, the Ohio Pharmacy Board and the</p> <p>14 Cleveland Police Department.</p> <p>15 A. There you go. So CPD was on that</p> <p>16 then. Okay.</p> <p>17 Q. And during those three years in</p> <p>18 which you were investigating Dr. Smirnoff, am I</p> <p>19 correct that he continued to practice medicine</p> <p>20 and prescribe prescription opioids?</p> <p>21 A. Yeah, which gets to the point that</p> <p>22 -- why we're here. How come he was allowed to</p> <p>23 get all those drugs from the distributors,</p> <p>24 because the pharmacies wouldn't give him the</p> <p>25 drugs. He was actually ordering the drugs from</p>

<p style="text-align: right;">Page 146</p> <p>1 the pharmacies when we cut him off. When we 2 searched his office, all the pharmacies cut him 3 off, so he started getting the drugs right from 4 -- I don't know who, whatever, but whatever 5 distributor.</p> <p>6 Q. Directly?</p> <p>7 A. Right.</p> <p>8 Q. He got them directly?</p> <p>9 A. Um-hum.</p> <p>10 Q. And that's because he was registered 11 himself --</p> <p>12 A. Yes.</p> <p>13 Q. -- as a DEA --</p> <p>14 A. No. He had the DEA license, but he 15 had to have a specific license from the pharmacy 16 board to be able to distribute from his office. 17 And 99 percent of the time doctors aren't going 18 to do that because you have to go through a 19 number of different administrative rules to do 20 that, proper labeling, proper pill vial, the 21 documentation, where it's at, and on top of 22 that, you don't want to be robbed.</p> <p>23 Q. But he had completed that entire 24 process, correct?</p> <p>25 A. Yes, he did.</p>	<p style="text-align: right;">Page 148</p> <p>1 want to direct your attention about two-thirds 2 of the way down to the paragraph that begins 3 with your last name.</p> <p>4 A. Um-hum.</p> <p>5 Q. "Gutierrez said it took a long time, 6 maybe too long, for law enforcement to commit 7 the time and money needed to document that the 8 doctor was doing something illegal, not just 9 medically unconventional."</p> <p>10 Was it your opinion that the 11 investigation of Dr. Smirnoff went too slowly?</p> <p>12 MR. SPELLACY: Objection.</p> <p>13 A. I can't make that determination now. 14 The only thing I can tell you is that it takes a 15 lot of time and effort and resources to 16 prosecute a doctor. And Smirnoff was one of 17 these doctors that was one of the larger ones, 18 so it took us a long time. Would everybody like 19 things to go quicker, sure. But that's the 20 common problem that I have had in my years as a 21 prosecutor.</p> <p>22 Q. Understood.</p> <p>23 The article also notes, "But as 24 years passed, more and more patients and 25 relatives filed complaints against him with the</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. And so he was operating under a 2 license of the Board of Pharmacy so that he 3 could be a direct supplier --</p> <p>4 A. That's correct.</p> <p>5 Q. -- of prescription drugs?</p> <p>6 A. That's correct.</p> <p>7 Q. And the Board of Pharmacy did not 8 suspend or revoke his ability to be that direct 9 supplier during the period of your 10 investigation, correct?</p> <p>11 A. No, they didn't.</p> <p>12 Q. It wasn't until after he was 13 convicted?</p> <p>14 A. That's correct.</p> <p>15 Q. At the time that your investigation 16 was proceeding, he was seeing approximately 17 3,000 patients?</p> <p>18 A. That was his patient population, 19 yes. And, again, I'm just going from memory -- 20 actually, from reading this stuff, so let's 21 preface all my answers saying I -- assuming all 22 of this information is correct.</p> <p>23 Q. Okay. I want to direct your 24 attention to page 3 of Exhibit 6, in which you 25 are quoted a few times about the case, and I</p>	<p style="text-align: right;">Page 149</p> <p>1 Ohio Pharmacy Board and the Ohio Medical Board."</p> <p>2 A. Um-hum.</p> <p>3 Q. Were you aware of those complaints?</p> <p>4 A. Only when we started getting into -- 5 into the case.</p> <p>6 Q. And, to your knowledge, did the 7 pharmacy board and the medical board have 8 authority to act irrespective of your criminal 9 investigation?</p> <p>10 A. No. They can't. They can't do 11 anything until I'm done. They're not going to 12 do anything administratively because, A, 13 evidence sharing would be -- could compromise my 14 investigation; and, B, he's got a 5th Amendment 15 right, so doing anything administratively until 16 the criminal case is over is like spitting into 17 the wind, you just don't do it that way. So 18 they have to wait until I'm done and then they 19 have the authority to go administratively and do 20 what they need to do.</p> <p>21 Q. Is that something that you've been 22 told by others or is that something that the 23 pharmacy board and the medical board have been 24 informed --</p> <p>25 A. No. They ask me, and we agree or</p>

<p style="text-align: right;">Page 150</p> <p>1 disagree most of the time whether they should 2 proceed administratively, and we have agreed in 3 most of the cases not to proceed 4 administratively.</p> <p>5 Now, there's some that have, because 6 I don't care if the evidence is out and it's not 7 going to compromise the investigation. It's all 8 about the investigation, whether it's going to 9 compromise it or not.</p> <p>10 Q. Okay. So in this case do you recall 11 whether you specifically asked the pharmacy 12 board or the medical board not to act because it 13 would compromise your criminal investigation?</p> <p>14 A. I don't recall specifically.</p> <p>15 Q. Do you recall whether you, in this 16 case or in any other case involving a doctor, 17 have ever filed a motion for an injunction to 18 try to suspend their license prior to the actual 19 conviction?</p> <p>20 A. I don't think that's a viable 21 procedure in the criminal context in the State 22 of Ohio.</p> <p>23 Q. Okay. So it's something that you've 24 never done?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 152</p> <p>1 A. And do you realize that before you 2 do that, you got to make sure they're not 3 suspicious orders?</p> <p>4 Q. Is that your understanding, Mr. 5 Gutierrez? I'm the one today that's asking 6 questions.</p> <p>7 A. I understand that.</p> <p>8 Q. You're the one that is answering the 9 questions.</p> <p>10 A. That's correct.</p> <p>11 Q. So you understand that distributors 12 cannot distribute medicine if it is not pursuant 13 to a prescription written by a medical 14 professional like a doctor?</p> <p>15 A. Repeat that.</p> <p>16 Q. Distributors distribute prescription 17 opioids only pursuant to actual prescriptions 18 written by a licensed medical professional?</p> <p>19 A. You're talking about when a doctor 20 orders it from the distributors; is that what 21 you're saying?</p> <p>22 Q. Distributors do not simply send 23 medication out unless it is pursuant to an 24 actual prescription, correct?</p> <p>25 A. My understanding is there's an</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. Okay. What efforts, if any -- 2 strike that.</p> <p>3 You said when you spoke to the media 4 about this unfortunate case that this man ruined 5 lives and this man killed people; this man did 6 so much damage to the community, I can't even 7 put it into words?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you stand by what you said there?</p> <p>10 A. Oh, absolutely. This guy was a bad 11 guy.</p> <p>12 Q. And doctors, like him, who are 13 over-prescribing, are killing people?</p> <p>14 A. Yeah. But you know what, let's back 15 this up a little bit. They couldn't kill 16 anybody unless they got the drugs from the 17 distributors, okay. And that's why -- you know, 18 the doctors are responsible for what they do and 19 we hold them responsible. Who's holding you 20 guys responsible?</p> <p>21 Q. Do you understand that distributors 22 may not distribute medication except to licensed 23 pharmacies who are filling legitimate 24 prescriptions pursuant to a prescription written 25 by a licensed medical professional?</p>	<p style="text-align: right;">Page 153</p> <p>1 order, that the doctor actually orders drugs 2 from a distributor. Whether that has to be by 3 prescription or not, I don't know.</p> <p>4 Q. Would you agree with me that doctors 5 who over-prescribe, like Dr. Smirnoff, for 6 example, can kill people?</p> <p>7 A. Absolutely.</p> <p>8 Q. And, in fact, in his case nine 9 people died?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. Under his care nine people died, 12 yes.</p> <p>13 Q. And this does real damage to the 14 community, like you said?</p> <p>15 A. Absolutely.</p> <p>16 Q. And Dr. Smirnoff is not the only 17 doctor in the county who was over-prescribing 18 prescription opioids --</p> <p>19 A. Nope.</p> <p>20 Q. -- right?</p> <p>21 In this case you enlisted the help 22 of an expert witness, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And that was because you needed a 25 medical authority to counter Dr. Smirnoff's</p>

<p style="text-align: right;">Page 154</p> <p>1 defense?</p> <p>2 A. I need a medical opinion based upon</p> <p>3 that statute I mentioned, what I have to prove.</p> <p>4 Q. Yes.</p> <p>5 A. Okay.</p> <p>6 Q. And do you recall that that expert</p> <p>7 witness found in the review of the patient</p> <p>8 records that some of the patients' toxicology</p> <p>9 screens actually showed the patients weren't</p> <p>10 ingesting the medication they were receiving?</p> <p>11 A. I'm not -- I don't recall that fact.</p> <p>12 Q. Okay. Is that something that you</p> <p>13 have seen in other cases involving doctors --</p> <p>14 A. That the --</p> <p>15 Q. -- that they indicate diversion?</p> <p>16 A. That indicate that they are not</p> <p>17 taking the pills?</p> <p>18 Q. Right.</p> <p>19 A. And they're selling them, yes.</p> <p>20 Q. Do you recall in this --</p> <p>21 Dr. Smirnoff case that the expert also concluded</p> <p>22 some of the patients were doctor shopping?</p> <p>23 A. Yes, I remember that.</p> <p>24 Q. How many of Dr. Smirnoff's</p> <p>25 approximately 3,000 patients were investigated</p>	<p style="text-align: right;">Page 156</p> <p>1 talking about addicts who go there to</p> <p>2 self-medicate.</p> <p>3 Q. Okay.</p> <p>4 A. We're not talking about people going</p> <p>5 there to grab the drugs to sell.</p> <p>6 Q. And of Dr. Smirnoff's approximately</p> <p>7 3,000 patients, how many were investigated or</p> <p>8 prosecuted for drug trafficking?</p> <p>9 MR. SPELLACY: Objection.</p> <p>10 A. I can't remember. I can't recall.</p> <p>11 Q. Do you recall whether your office</p> <p>12 took any efforts to investigate the patients</p> <p>13 whose toxicology screens indicated they may be</p> <p>14 diverting the drugs?</p> <p>15 A. You're asking me questions for</p> <p>16 something that happened 20 years ago. Unless I</p> <p>17 look at the file and start reading it all back,</p> <p>18 I can't answer specifically these type of</p> <p>19 questions.</p> <p>20 Q. So you don't recall?</p> <p>21 A. No, I do not recall. That would be</p> <p>22 the answer.</p> <p>23 Q. Do you recall whether any</p> <p>24 cooperation agreements were reached with respect</p> <p>25 to Dr. Smirnoff's patients in which they</p>
<p style="text-align: right;">Page 155</p> <p>1 and prosecuted by your office for drug</p> <p>2 diversion?</p> <p>3 A. I believe we -- I'm not sure. There</p> <p>4 was a handful of patients that we utilized as</p> <p>5 far as undercover to go back in, but generally</p> <p>6 speaking, if -- a patient that is getting drugs</p> <p>7 from a doctor and we think that that patient is</p> <p>8 getting it for illegal purposes, we will work</p> <p>9 with that individual to get into the doctor to</p> <p>10 see us. If he cooperates, we will. If he</p> <p>11 doesn't cooperate, then we'll prosecute him.</p> <p>12 But most of the time the patients cooperate with</p> <p>13 us, because we don't really want to go after the</p> <p>14 patients, we want to go after the doctor and the</p> <p>15 people responsible for all this stuff.</p> <p>16 Q. Why don't you want to go after the</p> <p>17 patients? Can you explain that further?</p> <p>18 A. Yeah. Because we see them as</p> <p>19 addiction is a disease.</p> <p>20 Q. So what about the patient I just</p> <p>21 described, who is actually receiving these</p> <p>22 prescription opioid prescriptions, but according</p> <p>23 to toxicology screens --</p> <p>24 A. That's different. Then he's</p> <p>25 trafficking. Then we'll go after them. We're</p>	<p style="text-align: right;">Page 157</p> <p>1 received some benefit --</p> <p>2 A. Absolutely.</p> <p>3 Q. -- for not being charged in exchange</p> <p>4 for testimony? Let me finish my question.</p> <p>5 A. I know.</p> <p>6 Q. Sometimes they're long questions --</p> <p>7 A. I know and I'm sorry.</p> <p>8 Q. -- and she needs time to type before</p> <p>9 you answer.</p> <p>10 A. I'm sorry.</p> <p>11 Q. And I'm sure your counsel wants the</p> <p>12 opportunity to object as well.</p> <p>13 So I will repeat my question. Do</p> <p>14 you recall entering into any cooperation</p> <p>15 agreements with Dr. Smirnoff's patients in which</p> <p>16 they received a benefit, such as not being</p> <p>17 prosecuted, in exchange for testifying or</p> <p>18 participating in your investigation?</p> <p>19 A. Yes.</p> <p>20 Q. How many such agreements do you</p> <p>21 recall?</p> <p>22 A. I can just remember two</p> <p>23 specifically, but I'm sure there were more.</p> <p>24 Q. Do you remember the names --</p> <p>25 A. Actually, there were a couple names.</p>

<p style="text-align: right;">Page 158</p> <p>1 No, I don't. No. I can remember, I think, 2 four, but I know there probably were more. 3 Q. In the Dr. Smirnoff case 4 specifically? 5 A. Specifically, yeah. 6 Q. Do you remember the patients' names? 7 A. No, I don't. 8 Q. And I said patients. Were each of 9 these cooperators patients? 10 A. Yes. 11 Q. And is this tactic, using patients 12 and entering into cooperation agreements in 13 furtherance of your investigation, a common 14 tactic you might use -- 15 A. Yes. 16 Q. -- in the prosecution of a doctor? 17 A. Yes. 18 Q. And were those two to four patients 19 that entered into the cooperation agreement drug 20 traffickers? 21 A. I don't think so, and -- I don't 22 recall. How's that? That's probably a better 23 answer. 24 Q. In Dr. Smirnoff's case were you able 25 to determine how many dosages of prescription</p>	<p style="text-align: right;">Page 160</p> <p>1 have supported a criminal action -- 2 A. No. 3 Q. -- against drug distributors or drug 4 manufacturers? 5 A. No. If I had, I would have. 6 Q. So you have shared with us some of 7 the challenges inherent in investigating a 8 doctor. In those cases, what are your best 9 sources of evidence? 10 A. Well, you have to define that, best 11 sources of evidence. 12 The first thing we do is look at the 13 amount of drugs that are coming out of that, and 14 then to be able to crack that, we need to be 15 able to go inside, so we need to get a CI, a 16 cooperating witness or a cop, to get into the 17 office to see what's going on. 18 Q. Could you prosecute a doctor simply 19 because they are prescribing and/or dispensing a 20 high volume of prescription opioids? Is the 21 number enough to justify a prosecution? 22 A. That in and of itself, no. 23 Q. Okay. What other evidence would you 24 need? 25 A. Well, you need a medical expert to</p>
<p style="text-align: right;">Page 159</p> <p>1 drugs he dispensed to citizens of your county 2 over the years he practiced? 3 A. I'm sure we have that number 4 somewhere. I don't recall. It is a lot. 5 Q. Do you know how many of those doses 6 were recovered by law enforcement agents? 7 A. The only -- the only things that we 8 covered is the drugs that we got in his -- in 9 his office when we searched it, but we never got 10 any drugs from the patients. 11 Q. Were any pharmacists prosecuted in 12 the Dr. Smirnoff investigation? 13 A. That's a good question. I don't 14 know. I don't recall. That's a good question. 15 Q. Were any distributors prosecuted in 16 this investigation? 17 A. No. 18 Q. Were any manufacturers prosecuted? 19 A. No. 20 Q. Why not? 21 MR. SPELLACY: Objection. 22 A. Because -- that's a loaded question. 23 It really, really is. I don't know how to 24 answer that. 25 Q. Did you have any evidence that would</p>	<p style="text-align: right;">Page 161</p> <p>1 indicate whether the drugs given were for 2 legitimate medical therapeutic purposes. 3 Q. And that expert would need to review 4 the actual patient records? 5 A. Correct. 6 Q. And those records are the ones that 7 we discussed previously, which are confidential 8 under HIPAA, correct? 9 A. Correct. 10 Q. What other evidence would you gather 11 to make a strong case against a doctor? 12 A. We talked about the pattern, the 13 amount of drugs, kind of drugs, combination of 14 drugs. And you look at, like, family members, 15 like the whole family get the same drugs, that 16 kind of stuff. You get a CI in to see if the 17 medical treatment is actually real instead of 18 being superficial. And then you need a medical 19 expert to tell me whether the treatment is 20 within the bounds of -- within the standards of 21 medicine. And I'm talking generally. 22 Q. Have you referred to the standard 23 that you must prove in these types of cases as 24 medical malpractice, quote, with an attitude? 25 A. Yes.</p>

<p style="text-align: right;">Page 162</p> <p>1 Q. And what do you mean by that phrase?</p> <p>2 A. 4731 is the statute that we</p> <p>3 mentioned before. That statute is what doctors</p> <p>4 are disciplined for for malpractice. For</p> <p>5 example, they don't use care and discrimination</p> <p>6 and use of their modalities. Okay. I have to</p> <p>7 prove three of those things in 4731 and I think</p> <p>8 it's 22, okay. That is malpractice. But the</p> <p>9 State of Ohio in State vs. McCarthy back in the</p> <p>10 early '90s indicated that I go one step further</p> <p>11 and I have to prove bad faith. So that's why I</p> <p>12 say it's medical malpractice with an attitude,</p> <p>13 because I have to prove bad faith, and usually</p> <p>14 that bad faith is greed or sex.</p> <p>15 Q. And in Dr. Smirnoff's case it was</p> <p>16 both?</p> <p>17 A. I had both, yes. That was a very</p> <p>18 salacious case, as you probably read.</p> <p>19 Q. Yes.</p> <p>20 So based on that standard, you need</p> <p>21 to go -- you need to dig into the actual records</p> <p>22 and the actual patient-by-patient specific</p> <p>23 information --</p> <p>24 A. Yes.</p> <p>25 Q. -- in order to conclude that the</p>	<p style="text-align: right;">Page 164</p> <p>1 of the most egregious cases, so I would say</p> <p>2 probably upwards -- because you're always going</p> <p>3 to have legitimate patients commingled with</p> <p>4 illegitimate patients in a pill mill. There's</p> <p>5 always some patients that go there that are</p> <p>6 actually -- there's -- nothing is being done</p> <p>7 wrong, so -- but to answer your question, I</p> <p>8 would say anywhere upwards between 70 and 80</p> <p>9 percent of Smirnoff's patients were</p> <p>10 illegitimate.</p> <p>11 Q. Okay. Now, Smirnoff, as you said,</p> <p>12 is one of the more egregious cases, and you</p> <p>13 charged him with conduct related to a number of</p> <p>14 different patients. Have you ever prosecuted a</p> <p>15 doctor for conduct with respect to a single</p> <p>16 patient, a single case?</p> <p>17 A. No.</p> <p>18 Q. I gather that that type of case</p> <p>19 would be more difficult because you cannot</p> <p>20 establish a pattern; is that --</p> <p>21 A. That is correct.</p> <p>22 Q. -- correct?</p> <p>23 A. That is correct.</p> <p>24 Q. Generally speaking, in your work,</p> <p>25 how many separate patients or separate instances</p>
<p style="text-align: right;">Page 163</p> <p>1 doctor is acting unlawfully?</p> <p>2 A. And that's how I frame my</p> <p>3 indictment, by patient. So if you're going to</p> <p>4 Dr. Smirnoff, I would indict on your</p> <p>5 prescription history.</p> <p>6 Q. So if Dr. Smirnoff had been indicted</p> <p>7 for, say, 200 counts, is that because -- is that</p> <p>8 relative to 200 separate patients?</p> <p>9 A. I don't know how many patients, but</p> <p>10 every time you get a prescription that's</p> <p>11 unlawful, you are receiving the drug, so you</p> <p>12 have possession of the drug, and it's an illegal</p> <p>13 processing charge, too. So there's different</p> <p>14 charges from every singular transaction. And,</p> <p>15 by the way, I aggregate the drugs, too.</p> <p>16 Q. Was there any effort by your office</p> <p>17 to compare the number of drugs prescribed and</p> <p>18 dispensed by Dr. Smirnoff against the number</p> <p>19 that you believe were illegally prescribed and</p> <p>20 dispensed? In other words, do you have a sense</p> <p>21 of how -- what percentage of his dispensing was</p> <p>22 legitimate versus illegitimate?</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 A. Again, you're asking me on a case</p> <p>25 from 20 years ago. I would say Smirnoff was one</p>	<p style="text-align: right;">Page 165</p> <p>1 do you like to see before you believe it reaches</p> <p>2 to the level where you could successfully</p> <p>3 prosecute a doctor?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. Again, we look at the overall</p> <p>6 pattern, okay, and we try to identify, let's</p> <p>7 say, 50 or 60 patients from OARRS, for example,</p> <p>8 that's getting what we would consider off -- you</p> <p>9 know, that's illegal. And from those 50 or 60</p> <p>10 patients, I usually narrow it down to anywhere</p> <p>11 between 10 and 20, 25 patients, that I will</p> <p>12 actually indict on, and those are the patients</p> <p>13 that we actually go out and talk to and ask to</p> <p>14 join team Ohio.</p> <p>15 Q. And what do you do to incentivize</p> <p>16 them to, as you said, join team Ohio?</p> <p>17 A. We don't prosecute them.</p> <p>18 Q. So it sounds, from what you said,</p> <p>19 that you generally try to make sure you have at</p> <p>20 least a critical mass of patients --</p> <p>21 A. Yes.</p> <p>22 Q. -- in which you can show the doctor</p> <p>23 has a pattern of improper prescribing; is that</p> <p>24 fair?</p> <p>25 A. That would be -- yeah, you can say</p>

<p style="text-align: right;">Page 166</p> <p>1 it that way.</p> <p>2 Q. I want to talk with you now about</p> <p>3 Dr. Charles Dunifer. We're going to go back to</p> <p>4 1997 --</p> <p>5 A. Here we go.</p> <p>6 Q. -- when he pled guilty to</p> <p>7 involuntary manslaughter for the death of a</p> <p>8 patient who overdosed.</p> <p>9 Do you remember this case?</p> <p>10 A. Oh, yes.</p> <p>11 Q. And am I correct that this was the</p> <p>12 first time that Ohio charged a doctor with</p> <p>13 manslaughter for improperly prescribing</p> <p>14 prescription opioids?</p> <p>15 A. I'm not sure about that, but I think</p> <p>16 so. I could not find anybody else in Ohio that</p> <p>17 had done that at that time. There could be.</p> <p>18 - - - - -</p> <p>19 (Thereupon, Gutierrez Deposition</p> <p>20 Exhibit 7, Article Entitled "Former</p> <p>21 Doctor Pleads Guilty: He Was</p> <p>22 Charged With Manslaughter In Drug</p> <p>23 Overdose," dated May 17, 1997, was</p> <p>24 marked for purposes of</p> <p>25 identification.)</p>	<p style="text-align: right;">Page 168</p> <p>1 he was charged with, according to page 2 of the</p> <p>2 article at the top, 74 counts, including</p> <p>3 involuntary manslaughter, racketeering, and 42</p> <p>4 counts of drug trafficking?</p> <p>5 A. Um-hum.</p> <p>6 MR. SPELLACY: Yes or nos. Try to</p> <p>7 do yes or no.</p> <p>8 THE WITNESS: I'm sorry.</p> <p>9 MR. SPELLACY: You're mumbling.</p> <p>10 THE WITNESS: It's usually my nap</p> <p>11 time at this time, so --</p> <p>12 Q. In that indictment was he charged</p> <p>13 with drug trafficking related to prescriptions</p> <p>14 for patients other than the patient who</p> <p>15 ultimately died?</p> <p>16 A. Yes.</p> <p>17 Q. And because he was charged with 72</p> <p>18 counts of drug trafficking, can we presume that</p> <p>19 that involved 72 individual patients?</p> <p>20 A. No.</p> <p>21 Q. We'd have to look at the indictment?</p> <p>22 A. Yeah. And I could tell you it's</p> <p>23 multiple patients.</p> <p>24 Q. Okay. Do you know how many</p> <p>25 individuals total received illegally prescribed</p>
<p style="text-align: right;">Page 167</p> <p>1 - - - - -</p> <p>2 Q. Handing you what has been marked for</p> <p>3 identification as Exhibit 7, again, we are</p> <p>4 looking at a Plain Dealer news article dated May</p> <p>5 1997. And this article, in the first sentence,</p> <p>6 confirms that this doctor is believed to be the</p> <p>7 first one charged with manslaughter with respect</p> <p>8 to prescriptions.</p> <p>9 A. Yes.</p> <p>10 Q. Is this doctor the only doctor your</p> <p>11 office has prosecuted for -- for manslaughter</p> <p>12 related to the patient overdosing?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. To the best of my knowledge.</p> <p>15 Q. And you stated earlier that one of</p> <p>16 the challenges in these manslaughter cases is</p> <p>17 proving that the doctor is the proximate cause.</p> <p>18 In this case, in Dr. Dunifer's case, you were</p> <p>19 able to prove that he was the proximate cause of</p> <p>20 his patient's death; is that correct?</p> <p>21 A. That is correct.</p> <p>22 Q. It was a particularly strong case,</p> <p>23 wasn't it?</p> <p>24 A. Yes, it was.</p> <p>25 Q. Now, when Dr. Dunifer was indicted,</p>	<p style="text-align: right;">Page 169</p> <p>1 opioids from Dr. Dunifer?</p> <p>2 A. How many individuals? I can't</p> <p>3 recall that.</p> <p>4 Q. Dr. Dunifer was, in your words, one</p> <p>5 of the biggest drug dealers in Cuyahoga County.</p> <p>6 Do you agree with that?</p> <p>7 A. I say that a lot, don't I?</p> <p>8 Q. Well, on page 1, near the bottom,</p> <p>9 "Gutierrez characterized Dunifer as one of the</p> <p>10 biggest drug dealers in Cuyahoga County."</p> <p>11 A. Um-hum.</p> <p>12 Q. And you stated, "The whole practice</p> <p>13 was geared to drug dealing."</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Ultimately Dr. Dunifer ended</p> <p>16 up pleading guilty?</p> <p>17 A. Correct.</p> <p>18 Q. And your office dropped many of the</p> <p>19 charges against him in exchange for that guilty</p> <p>20 plea to manslaughter, correct?</p> <p>21 A. Correct.</p> <p>22 Q. What factors went into that</p> <p>23 determination?</p> <p>24 A. As far as what goes? You mean the</p> <p>25 plea?</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. Yes, the plea offer. 2 A. Like anything else, we determined 3 the charges he's going to plea to and a 4 sentence, and then, you know, that saves us time 5 and resources and we don't have to write an 6 appeal and all sorts of other stuff, but if 7 we -- just like any plea agreement, there's 8 always a compromise, and that was the 9 compromise.</p> <p>10 Q. Do you recall what sentence 11 Dr. Dunifer received?</p> <p>12 A. According to this, he got three to 13 15.</p> <p>14 Q. And do you know where within that 15 range, what his sentence was?</p> <p>16 A. That would be it. He has got to 17 stay a minimum of three. In Ohio there used to 18 be a lot of what we call tails on the sentence, 19 whereas now -- well, they just redid the law 20 again in March. They're going to put some tails 21 on first and second degrees, but now they have 22 more definite sentencing. I don't know exactly 23 what he did, but he got a three to 15. He's got 24 to do a minimum of three, a maximum of 15. It 25 depends on the department of corrections at that</p>	<p style="text-align: right;">Page 172</p> <p>1 are gone. 2 Q. So, to answer my question, you did 3 not attempt to recover the prescription medicine 4 from his individual patients?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 Q. You believed that the medicine was 7 already gone?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall how many of 10 Dr. Dunifer's patients you decided to charge, if 11 any?</p> <p>12 A. I can't recall. I can't recall. I 13 know we did have some cooperating patients on 14 that case.</p> <p>15 Q. Now, in the Dunifer case, the 16 patient died in 1994, three years before the 17 doctor ultimately pled guilty?</p> <p>18 A. Correct.</p> <p>19 Q. According to this news article, 20 investigators became aware of Dunifer's 21 practices through complaints that dated back to 22 1990.</p> <p>23 A. Okay.</p> <p>24 Q. Were you aware of those complaints? 25 MR. SPELLACY: Objection.</p>
<p style="text-align: right;">Page 171</p> <p>1 point if he's going to do the whole 15. 2 Q. In your opinion, was that an 3 appropriate sentence?</p> <p>4 A. Absolutely, because that's the most 5 I could have got on any of the charges. In 6 fact, the reality of that one was the drug 7 trafficking charges carried more time than the 8 involuntary manslaughter.</p> <p>9 Q. Why was that?</p> <p>10 A. Just the nature of the sentencing, 11 and that's still the same today.</p> <p>12 Q. What efforts, if any, did your 13 office or your investigative partners take to 14 try to recover the illegal prescription medicine 15 from Dr. Dunifer's patients or others?</p> <p>16 A. I want to -- maybe we can put this 17 to rest, okay. When doctors give out pain 18 medication, opiate pain medications, they 19 usually take them or sell them, so it's 20 impossible to try to recover any of the drugs. 21 So you keep asking me that same question and I 22 think I said in the morning that's just a silly 23 question, because you never recover the drugs 24 that have been given out by the doctor and 25 filled at pharmacies. They're gone. The drugs</p>	<p style="text-align: right;">Page 173</p> <p>1 A. I don't recall that without looking 2 at the file.</p> <p>3 Q. And you mentioned at the very last 4 paragraph of page 1 that "Dunifer had been on a 5 list of doctors" -- the bottom of page 1, 6 "Dunifer had been on a list of doctors who wrote 7 many more prescriptions than most of their 8 colleagues." What list are you referring to?</p> <p>9 A. There is a -- how should I say -- a 10 hit list that the investigators have through 11 being out in the street of doctors that are 12 known to be high writers.</p> <p>13 Q. Which investigators create or 14 maintain this hit list?</p> <p>15 A. It -- I don't know if anybody 16 actually maintains a list, but there's just a 17 number of doctors that keep coming up in 18 conversations in this area. There's really no 19 official list that anybody keeps. It's just 20 that my investigator would come in and say, Hey, 21 you know, Dr. Joe and Dr. George, we're hearing 22 about these guys.</p> <p>23 Q. Well, in the news article you said 24 that he had been on a list of doctors who wrote 25 many more prescriptions than most of their</p>

<p style="text-align: right;">Page 174</p> <p>1 colleagues. Were you not referring to a 2 specific list? 3 A. I wasn't being -- 4 MR. SPELLACY: Objection. 5 A. I wasn't being literal. Like right 6 now I can tell you there's a bunch of high 7 writers in Cuyahoga County that the 8 investigators are aware of, okay. So, I mean, 9 there's high writers, and the good ones we can 10 never get to. 11 Q. Why not? 12 A. Because they're smart enough to 13 cover their tracks. 14 Q. When you say a high writer, you're 15 talking about a doctor who prescribes -- 16 A. Prescribes a lot of prescriptions, 17 yes. 18 Q. How many high writers are you aware 19 of, a handful or a hundred? 20 MR. SPELLACY: Objection. 21 A. No. Just a handful. 22 Q. And is one of the reasons you can't 23 get to these high writers because you haven't 24 been able yet to establish probable cause in 25 order to get a search warrant to see the medical</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Pharmacy board. 2 Q. The pharmacy board? 3 A. Yes. 4 Q. So sitting here today, you are aware 5 of some high writers? 6 A. A couple, yes. 7 Q. Who seem suspicious for that reason? 8 A. Um-hum. 9 Q. But for whom you do not yet have 10 sufficient evidence to launch a criminal 11 investigation? 12 MR. SPELLACY: Objection. 13 A. We have some preliminary evidence of 14 that but we have not undergone a full-blown 15 investigation. 16 Q. Similarly, do you, sitting here 17 today, have particular pharmacies that have 18 raised suspicions as high dispensing 19 establishments? 20 MR. SPELLACY: Objection. 21 A. Yes and no. We know there are some 22 pharmacies that the doctor shoppers and the 23 prescription rings like to go to. Okay. Mostly 24 they're inner city ones. 25 Q. How about individual patients?</p>
<p style="text-align: right;">Page 175</p> <p>1 records? 2 A. As I indicated before, it takes a 3 lot of time and effort and resources to zero in 4 on a doctor. 5 Q. I believe you. 6 A. So I have to have political will by 7 the outside agencies to do this, and it's very 8 difficult to do these cases, and so a lot of 9 investigators, and especially like local 10 suburban police departments, are not equipped to 11 do this, and they don't want to get into it, so 12 -- and if the pharmacy board, who is overtaxed 13 and overwhelmed right now, can't get their 14 people to do it, and if somebody like WEB can't 15 do it, then it doesn't get done because we don't 16 have the resources. So what we try to do is go 17 after the most egregious ones, the ones that we 18 know we can knock off. 19 Q. And what sources are used to try to 20 determine who the high writers are? 21 A. OARRS now. 22 Q. OARRS. And which law enforcement 23 agency monitors OARRS and comes up with a list, 24 whether it be a physical list or a metaphorical 25 list?</p>	<p style="text-align: right;">Page 177</p> <p>1 Based on the OARRS data, has law enforcement 2 identified particular patients that have raised 3 a red flag for you? 4 MR. SPELLACY: Objection. 5 A. Within the context of a doctor, 6 Because we just don't go looking on OARRS for 7 individuals that are getting drugs? That's not 8 how it works. 9 Q. So OARRS is used to determine 10 whether someone is doctor shopping, for example? 11 A. Yes, exactly. 12 Q. And so does law enforcement 13 proactively attempt to use OARRS to determine 14 which patients are using multiple doctors to 15 obtain -- 16 A. Yes. 17 Q. -- high quantities of prescription 18 opioids? 19 A. Yes. 20 Q. And are you aware of some 21 individuals that meet that category? 22 A. Not presently, but in the past, yes. 23 Q. And when you've become aware of such 24 individuals, what actions, if any, has your 25 office taken?</p>

<p style="text-align: right;">Page 178</p> <p>1 A. Well, our office doesn't take any 2 action. It's the investigative agencies that 3 take the action to develop the evidence. We 4 only take action once the evidence is presented 5 to me. So they go out and investigate, and what 6 that means is they go to the various doctors and 7 say, you know, George is coming to get scripts 8 from you. Yeah. Do you know he's getting 9 scripts from Dr. Joe down the road? No. That's 10 how that works.</p> <p>11 Q. To what extent is your office 12 involved in an ongoing investigation?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. Regarding a doctor, a practitioner, 15 I manage and coordinate the investigation 16 usually from the beginning.</p> <p>17 Q. So is it fair to say that perhaps 18 for more complex investigations, your office 19 would be involved --</p> <p>20 A. Yes.</p> <p>21 Q. -- as a partner with the 22 investigating agency?</p> <p>23 A. I think that's a good way to say it, 24 complex investigations, yes.</p> <p>25 Q. The Dr. Dunifer investigation took</p>	<p style="text-align: right;">Page 180</p> <p>1 you know how many prescription opioids he 2 dispensed and prescribed to patients?</p> <p>3 A. I don't recall that.</p> <p>4 Q. Do you have any estimate?</p> <p>5 A. No. I'd have to get to the file, 6 look at the file to answer that question, but a 7 lot.</p> <p>8 Q. With respect to the Dr. Dunifer 9 case, would you agree that cases that try to 10 challenge a doctor's medical judgment are 11 difficult?</p> <p>12 A. Yes.</p> <p>13 Q. And that's because doctors can claim 14 that a person's death was an unintentional 15 result of legitimate therapy?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. You're talking about death now?</p> <p>18 Q. Yes.</p> <p>19 A. So you're talking the manslaughter 20 context?</p> <p>21 Q. Yes.</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. Repeat the question because I 24 thought you were talking a different context.</p> <p>25 Q. Any case, including the manslaughter</p>
<p style="text-align: right;">Page 179</p> <p>1 18 months, correct?</p> <p>2 A. Um-hum. Yes.</p> <p>3 Q. And between -- in the interim, from 4 the time the patient died until you convicted 5 the doctor, the patient's family actually sued 6 him in civil court and settled, correct?</p> <p>7 A. I'm not aware of that, but could 8 have been. I don't recall.</p> <p>9 Q. And I have the same questions for 10 Dr. Dunifer as I had for the other doctors, and 11 that is did he continue to treat patients and 12 prescribe medication while the 18-month 13 investigation was ongoing?</p> <p>14 A. I believe so. He was still 15 practicing, yes.</p> <p>16 Q. And, again, your office didn't take 17 steps to attempt to suspend his medical --</p> <p>18 A. We can't.</p> <p>19 Q. -- license?</p> <p>20 A. We can't. You keep asking me the 21 same question. We can't. If we could, we 22 would.</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 Q. During that time period, the 18 25 months in which he was being investigated, do</p>	<p style="text-align: right;">Page 181</p> <p>1 case, that tries to challenge a doctor's medical 2 judgment is going to be a difficult case 3 relative to your run of the mill --</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. Absolutely.</p> <p>6 Q. And one of the reasons for that is 7 in manslaughter cases doctors can claim that a 8 person's death was an unintentional result of 9 legitimate medical treatment or therapy?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. Yeah, they could claim that.</p> <p>12 Q. Also, if that patient misuses the 13 drugs, like you described earlier, it's 14 difficult to then hold the physician 15 responsible?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. That is correct.</p> <p>18 Q. And if the patient has ingested 19 other drugs, it's difficult to hold the 20 physician responsible?</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. Yes.</p> <p>23 Q. Do you believe that the Board of 24 Medicine has done enough to regulate the 25 prescribing practices of physicians in your</p>

<p>1 county?</p> <p>2 MR. SPELLACY: Objection.</p> <p>3 A. The medical board?</p> <p>4 Q. Yes.</p> <p>5 A. The Ohio State Medical Board has</p> <p>6 done enough to regulate?</p> <p>7 Q. To regulate the prescribing</p> <p>8 practices of the physicians in your county.</p> <p>9 MR. SPELLACY: Objection.</p> <p>10 A. I can't really answer that.</p> <p>11 Q. Do you view the Board of Medicine as</p> <p>12 an effective oversight for physicians?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. Administratively.</p> <p>15 Q. If your office identifies a</p> <p>16 physician that it believes is suspicious, does</p> <p>17 it provide that physician's name to the medical</p> <p>18 board?</p> <p>19 MR. SPELLACY: Objection.</p> <p>20 A. By that time the medical board knows</p> <p>21 about it. If they don't, I will inform the</p> <p>22 medical board that we're looking at a doctor,</p> <p>23 and I ask them for any information, to be honest</p> <p>24 with you.</p> <p>25 Q. In your experience, how long does it</p>	Page 182	<p>1 typically take for the medical board to prevent</p> <p>2 a doctor from continuing to practice?</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. I couldn't answer that. That's</p> <p>5 contextual.</p> <p>6 Q. Moving on to pharmacists now, are</p> <p>7 you aware of any pharmacists in Cuyahoga County</p> <p>8 that sold prescription opioids to people</p> <p>9 improperly?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I can't recall.</p> <p>12 Q. I'm going to show you Plaintiffs'</p> <p>13 response to an interrogatory --</p> <p>14 A. Okay.</p> <p>15 Q. -- which I understand will be marked</p> <p>16 as Exhibit 8.</p> <p>17 - - - - -</p> <p>18 (Thereupon, Gutierrez Deposition</p> <p>19 Exhibit 8, Cuyahoga County's</p> <p>20 Supplemental Response and Objections</p> <p>21 to Distributor Defendants'</p> <p>22 Interrogatory Number 3 As Rewritten</p> <p>23 By Special Master David Cohen, was</p> <p>24 marked for purposes of</p> <p>25 identification.)</p>	Page 184	<p>1 - - - - -</p> <p>2 Q. And you can turn to page 5.</p> <p>3 Plaintiffs were asked at the top of page 5 to</p> <p>4 "Identify those pharmacies within your</p> <p>5 geographic boundaries that you investigated for</p> <p>6 or learned were being investigated for or</p> <p>7 learned were engaged in possible diversion or</p> <p>8 wrongful prescription of prescription opioids</p> <p>9 during the time frame."</p> <p>10 If you look to the bottom of page 5,</p> <p>11 you see the response --</p> <p>12 A. Um-hum.</p> <p>13 Q. -- that "According to the records of</p> <p>14 the State of Ohio Board of Pharmacy, the</p> <p>15 following pharmacies or pharmacists were</p> <p>16 investigated within Cuyahoga County," and it</p> <p>17 provides a chart of pharmacists, page 5 through</p> <p>18 page 8. In total, it lists 19 pharmacies that</p> <p>19 have been involved in investigations since</p> <p>20 October 1996 all the way until the most recent,</p> <p>21 January 2019.</p> <p>22 A. Not to be argumentative, but you're</p> <p>23 saying pharmacies, and all these have to deal</p> <p>24 with particular pharmacists.</p> <p>25 Q. Then I will use the word</p>
	Page 183		Page 185	

<p style="text-align: right;">Page 186</p> <p>1 know that answer.</p> <p>2 Q. Could you tell me which ones have</p> <p>3 been investigated by your office?</p> <p>4 A. I couldn't tell you that either.</p> <p>5 Q. Have you personally worked on any</p> <p>6 cases involving the entities listed in this</p> <p>7 chart?</p> <p>8 A. Well, again, they're listing</p> <p>9 pharmacists here, okay, that they're going</p> <p>10 after, okay. I have prosecuted pharmacists over</p> <p>11 the course of my career. I can't tell you if</p> <p>12 any of these pharmacists are on this list.</p> <p>13 Q. Just looking at the names that are</p> <p>14 listed, none of these stand out to you as a case</p> <p>15 you might have -- you recall investigating or</p> <p>16 prosecuting?</p> <p>17 A. Chesterfield Pharmacy rings a bell.</p> <p>18 And that is a pharmacy. And I don't know if</p> <p>19 that pharmacy was involved in the Smirnoff case</p> <p>20 -- I think it was involved in the Smirnoff</p> <p>21 case -- or another case. I'm not sure. But let</p> <p>22 me look at the other names --</p> <p>23 Q. Sure.</p> <p>24 A. -- and see if anything else stands</p> <p>25 out to me.</p>	<p style="text-align: right;">Page 188</p> <p>1 A. I can't answer that question. I</p> <p>2 don't have that knowledge.</p> <p>3 Q. Based on the knowledge you do have,</p> <p>4 and your review of this list, are any pharmacies</p> <p>5 or pharmacists missing?</p> <p>6 MR. SPELLACY: Objection.</p> <p>7 A. I couldn't answer that question. I</p> <p>8 don't know.</p> <p>9 Q. Have you prosecuted -- has your</p> <p>10 office prosecuted more than 19 pharmacists or</p> <p>11 pharmacies?</p> <p>12 A. I don't know.</p> <p>13 Q. We're done with that exhibit.</p> <p>14 A. And I just want to qualify that</p> <p>15 answer in the sense that sometimes when</p> <p>16 pharmacists do come into our office, if it's a</p> <p>17 simple thing of a pharmacist stealing drugs, it</p> <p>18 will go through general felony.</p> <p>19 Q. Prior to this litigation did your</p> <p>20 office ever communicate with the DEA concerning</p> <p>21 any pharmacists improperly supplying</p> <p>22 prescription opioids?</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 A. I'm sure during the course of some</p> <p>25 of these doctor investigations, yes.</p>
<p style="text-align: right;">Page 187</p> <p>1 None of the other names stand out to</p> <p>2 me.</p> <p>3 Q. Okay. And among the four entries</p> <p>4 for Chesterfield Pharmacy, do any of the</p> <p>5 individual pharmacists who are listed refresh</p> <p>6 your memory?</p> <p>7 A. Okay. Where are the four for the</p> <p>8 Chesterfield Pharmacy?</p> <p>9 Q. Page 6 in the center of the page.</p> <p>10 A. Okay.</p> <p>11 Q. Row 2, 3, 4 and 5. And you see that</p> <p>12 that corresponds --</p> <p>13 A. Right. I see that, yeah. Those</p> <p>14 names do not ring a bell.</p> <p>15 Q. Okay. So you believe you worked on</p> <p>16 investigation or prosecution involving</p> <p>17 Chesterfield Pharmacy but you cannot recall</p> <p>18 specifics?</p> <p>19 A. Yeah. That was in connection with</p> <p>20 either the Smirnoff case or another case. It</p> <p>21 wasn't standing of itself.</p> <p>22 Q. To your knowledge, has your office</p> <p>23 prosecuted or disciplined any pharmacies or</p> <p>24 pharmacists other than those that appear on this</p> <p>25 list?</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. Did you yourself make those</p> <p>2 communications with the DEA?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you recall any communications</p> <p>5 you've had with the DEA regarding pill mills</p> <p>6 operating in your county?</p> <p>7 A. Yes.</p> <p>8 Q. How many such conversations?</p> <p>9 A. Over the course of my three decades</p> <p>10 of doing this, numerous times.</p> <p>11 Q. So how long have you been</p> <p>12 prosecuting prescription opioids?</p> <p>13 A. Since 1989, practitioners.</p> <p>14 Q. Since 1989?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ever communicate with the</p> <p>17 Ohio Board of Pharmacy about pharmacists</p> <p>18 dispensing opioids illegally?</p> <p>19 A. Yes. Usually as a result of them</p> <p>20 telling me.</p> <p>21 Q. Sitting here today, can you tell us</p> <p>22 how many pharmacists your office has</p> <p>23 investigated or prosecuted since 2005?</p> <p>24 A. I don't have that --</p> <p>25 MR. SPELLACY: Objection.</p>

<p style="text-align: right;">Page 190</p> <p>1 A. I don't have that information.</p> <p>2 Q. When you set out to investigate a</p> <p>3 pharmacist, what are the typical steps in your</p> <p>4 investigative plan?</p> <p>5 A. Well, it's -- depends what the</p> <p>6 pharmacist is doing, okay. If the pharmacist</p> <p>7 himself is just stealing medication and</p> <p>8 self-medicating, that we would call a low end</p> <p>9 case, where usually my unit is not going to take</p> <p>10 that, okay.</p> <p>11 Q. Which unit would take that?</p> <p>12 A. General felony, okay, because it's a</p> <p>13 simple case. It's just a theft case.</p> <p>14 Now, sometimes there have been</p> <p>15 pharmacy techs that are involved in a scrip</p> <p>16 ring, okay, which is different, okay, and -- but</p> <p>17 generally speaking, pharmacists that I have</p> <p>18 dealt with, which are very few -- I only can</p> <p>19 remember maybe, like I said, Chesterfield</p> <p>20 Pharmacy, so there's not really any -- how</p> <p>21 should I say -- a protocol that we have with</p> <p>22 pharmacists as we do with doctors, is what I'm</p> <p>23 trying to say. It's contextual, what they're</p> <p>24 doing.</p> <p>25 Q. Do you know how many pharmacists or</p>	<p style="text-align: right;">Page 192</p> <p>1 foot in the grave anyway, so we didn't -- I just</p> <p>2 remember that one because, you know, it kind of</p> <p>3 sticks out.</p> <p>4 Q. So he lost his license but he wasn't</p> <p>5 prosecuted?</p> <p>6 A. Yes, because it was only Viagra.</p> <p>7 Q. Do you have any other examples of</p> <p>8 cases --</p> <p>9 A. No. That's the one that stands out</p> <p>10 to me.</p> <p>11 Q. I can see why.</p> <p>12 Did you or your office ever receive</p> <p>13 reports that pharmacists had placed suspicious</p> <p>14 orders of prescription opioids?</p> <p>15 A. No.</p> <p>16 Q. Did you receive any reports similar</p> <p>17 to that from the DEA?</p> <p>18 A. They never shared it with me.</p> <p>19 Q. How about from the Ohio Board of</p> <p>20 Pharmacy; did they ever share reports of</p> <p>21 suspicious orders by pharmacists?</p> <p>22 A. No, not that I recall.</p> <p>23 Q. Have you ever seen something called</p> <p>24 a suspicious order report?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 191</p> <p>1 pharmacies have been investigated but not</p> <p>2 charged by your office?</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. I don't know.</p> <p>5 Q. Are any records kept relating to</p> <p>6 that question?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. I don't know about that either.</p> <p>9 Q. Do you know who might know?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. No, I don't.</p> <p>12 Q. Has your office been involved in any</p> <p>13 cases in which pharmacists or pharmacies have</p> <p>14 lost their licenses even if you didn't</p> <p>15 ultimately pursue criminal action against them?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. Tell me about those cases.</p> <p>19 A. I can remember a case of an older</p> <p>20 guy -- I'm talking like 78, 79 -- that was</p> <p>21 stealing a bunch of Viagra so he could have sex</p> <p>22 with his stripper girlfriend, and because he was</p> <p>23 so old and everything, that we didn't -- and it</p> <p>24 was Viagra and the pharmacy board just -- we</p> <p>25 didn't prosecute. And I think the guy had one</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Under what circumstances did you see</p> <p>2 one?</p> <p>3 A. I can't really tell you that. It's</p> <p>4 under investigation right now.</p> <p>5 Q. Okay. So it relates to a case</p> <p>6 that's currently being investigated?</p> <p>7 A. Yes.</p> <p>8 Q. And is that the only case in which</p> <p>9 you've reviewed a suspicious report?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I think so.</p> <p>12 Q. And who did that suspicious order</p> <p>13 report? Who generated that particular report?</p> <p>14 A. I can't really tell you. This is an</p> <p>15 ongoing criminal investigation. I can't tell</p> <p>16 you anything.</p> <p>17 Q. Trust me, I understand, and I'm not</p> <p>18 asking you to identify by name, but could you</p> <p>19 identify by type? Was it a distributor who</p> <p>20 created that suspicious order report you're</p> <p>21 reviewing?</p> <p>22 A. No, it wasn't a distributor.</p> <p>23 Q. Okay. Was it a pharmacy --</p> <p>24 A. That --</p> <p>25 Q. -- that created the suspicious order</p>

<p style="text-align: right;">Page 194</p> <p>1 report you're referring to?</p> <p>2 A. I can't really tell you any facts</p> <p>3 and circumstances about that case, ma'am.</p> <p>4 Q. Has your office investigated</p> <p>5 instances of prescription forgery --</p> <p>6 A. Yes.</p> <p>7 Q. -- for prescription opioids?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And how often -- scratch that.</p> <p>10 How many such cases has your office</p> <p>11 prosecuted over the past 20 years?</p> <p>12 MR. SPELLACY: Objection.</p> <p>13 A. Forging prescriptions?</p> <p>14 Q. Yes.</p> <p>15 A. Numerous times.</p> <p>16 Q. More than 50?</p> <p>17 A. Yes.</p> <p>18 Q. More than 200?</p> <p>19 A. Yes. Over 20 years, sure.</p> <p>20 Q. More than a thousand?</p> <p>21 A. I would say over a thousand, and</p> <p>22 counting.</p> <p>23 Q. And can you provide in those cases</p> <p>24 an example of like a typical case, how that</p> <p>25 might transpire?</p>	<p style="text-align: right;">Page 196</p> <p>1 that go undetected?</p> <p>2 A. Absolutely.</p> <p>3 Q. Do you have any estimate or basis to</p> <p>4 conclude as to what percentage you believe go</p> <p>5 undetected?</p> <p>6 MR. SPELLACY: Objection.</p> <p>7 A. I can't really give you an answer to</p> <p>8 that. Only to the extent that it is very</p> <p>9 prevalent out there, forged prescriptions. I've</p> <p>10 seen the spike in the last four years with scrip</p> <p>11 rings.</p> <p>12 Q. When you say "scrip rings," what are</p> <p>13 you referring to?</p> <p>14 A. I'm talking about somebody who</p> <p>15 steals scripts, and like I said, the organized</p> <p>16 ring.</p> <p>17 Q. In those cases do you sometimes see</p> <p>18 individuals who take low level jobs at hospitals</p> <p>19 or in medical buildings in order to obtain</p> <p>20 access to prescription pads?</p> <p>21 A. I don't know if they get employment</p> <p>22 to do that, but that's one way of how sometimes</p> <p>23 they get it. They will pay somebody who's like</p> <p>24 the -- you know, who's cleaning the offices.</p> <p>25 Q. Do you recall a case involving a</p>
<p style="text-align: right;">Page 195</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 A. Well, there's a difference between a</p> <p>3 forged prescription and a counterfeit</p> <p>4 prescription.</p> <p>5 Q. What's the difference?</p> <p>6 A. A forged prescription is that I get</p> <p>7 a prescription and put the doctor's --</p> <p>8 (Interruption.)</p> <p>9 Q. Okay. What's the difference?</p> <p>10 A. Okay. The forged prescription is</p> <p>11 where somebody gets a blank prescription and</p> <p>12 fills it out. Counterfeit prescription is where</p> <p>13 somebody actually creates the prescription</p> <p>14 itself and then fills it out.</p> <p>15 Q. And you see both types of cases?</p> <p>16 A. Yes, counterfeit and forged.</p> <p>17 Q. Is one type more common than others?</p> <p>18 A. The forged. It's easier to steal</p> <p>19 than to create.</p> <p>20 Q. Do you think your hard working law</p> <p>21 enforcement agents in the county succeed in</p> <p>22 detecting each and every instance in which</p> <p>23 prescriptions are forged?</p> <p>24 A. No.</p> <p>25 Q. So there are certainly some cases</p>	<p style="text-align: right;">Page 197</p> <p>1 defendant named Destiny Ramos? It was a 2012</p> <p>2 case out of your office.</p> <p>3 A. Oh, yeah.</p> <p>4 Q. And did the defendant, Destiny</p> <p>5 Ramos, and her boyfriend, Donte Jones, engage in</p> <p>6 a scrip ring?</p> <p>7 A. I believe so, yes.</p> <p>8 Q. Did you personally prosecute that</p> <p>9 case?</p> <p>10 A. Yes, with another prosecutor; yes.</p> <p>11 Q. And tell us about the allegations in</p> <p>12 that case.</p> <p>13 A. I know the name. I know it was a</p> <p>14 scrip ring. I'm not sure about the facts or</p> <p>15 not, if this is the one from the Cleveland</p> <p>16 Clinic or not. I'm not sure.</p> <p>17 - - - - -</p> <p>18 (Thereupon, Gutierrez Deposition</p> <p>19 Exhibit 9, News Article Titled "For</p> <p>20 A Certain Kind Of Drug Trafficker,</p> <p>21 Blank Prescription Pads Are The Way</p> <p>22 To Get Pain Pills, With A Little</p> <p>23 Help From Their Friends, Who They</p> <p>24 Use To Get Them Filled," Beginning</p> <p>25 Bates Number CLEVE-001485599, was</p>

<p>1 marked for purposes of 2 identification.) 3 - - - - 4 Q. I'm going to give you Exhibit 9, 5 which is a news article. 6 A. I should have brought my readers. 7 Q. This particular article highlights 8 two cases, one involving the Ramos case out of 9 your office -- 10 A. Um-hum. 11 Q. -- and one involving a case out of 12 the Ohio Attorney General's Office involving 13 defendant Angela Hicks. Both are scrip ring 14 cases. I'll give you a moment to review the 15 article. 16 A. We did both of these cases. The 17 Attorney General's Office did not do Hicks. 18 Q. Okay. So you said that your office 19 is the one that prosecuted -- 20 A. Yes. Both those cases were my 21 cases. 22 Q. And Angela Hicks was a pediatric 23 medical assistant at University Hospital, 24 correct? 25 A. Yes.</p>	<p>Page 198</p> <p>1 case except this news article, but I'll agree 2 with you. 3 Q. Does that accord with your memory of 4 the facts? 5 A. Basically, generally, yes. 6 Q. Okay. And do you recall that in 7 this case the individuals who were attempting to 8 fill these invalid prescriptions took measures 9 to evade authorities by going to several 10 different pharmacies? 11 A. Yes. 12 Q. In fact, according to this news 13 article, they went to 17 different pharmacies, 14 correct? 15 A. Again, that's a common factor in 16 these type of cases, yes. 17 Q. And that's to make it more difficult 18 for pharmacists and pharmacies to detect the 19 behavior? 20 A. That's correct. 21 Q. With respect to the Destiny Ramos 22 case, she was training at Southwest General 23 Hospital, correct? 24 A. Yes. 25 Q. And she and her boyfriend recruited</p>
<p>Page 199</p> <p>1 Q. And she stole about 640 prescription 2 sheets? 3 A. Pad, yeah. Pad. 4 Q. Each sheet on that prescription pad 5 is worth between \$50 and \$100 on the street, 6 correct? 7 A. That's correct. 8 Q. And this is, by the way, a -- 9 A. 2012, I think. 10 Q. -- 2014 case. So at this point, in 11 2019, would a sheet for prescriptions be worth 12 more -- 13 MR. SPELLACY: Objection. 14 Q. -- or the same? 15 A. I think around the same. Not much 16 more. 17 Q. Given how many sheets Ms. Hicks 18 stole, she could have obtained a possible 30 to 19 \$60,000, correct? 20 A. Yes, if you add that up. 21 Q. And according to the evidence in 22 this case, Angela and Joshua Hicks recruited 23 their friends to go out and fill the 24 prescriptions, correct? 25 A. Again, I don't have the facts of the</p>	<p>Page 201</p> <p>1 18 people to participate in the scrip ring, 2 correct? 3 A. Sounds about right. Again, I want 4 to preface all these answers by saying I don't 5 have the file in front of me. 6 Q. But to the best of your 7 recollection -- 8 A. Yes. 9 Q. -- that sounds correct? 10 A. Yes. 11 Q. Do you consider prescription pad 12 theft to be an ongoing challenge for the county? 13 A. Yes. 14 Q. And for hospitals and physician 15 offices? 16 A. Yes, I do. 17 Q. In your personal experience, have 18 you seen prescription pads left out in plain 19 sight in medical offices? 20 MR. SPELLACY: Objection. 21 A. Yes. 22 Q. And in your opinion, you don't 23 believe that medical facilities always carefully 24 guard those prescription pads? 25 MR. SPELLACY: Objection.</p>

<p style="text-align: right;">Page 202</p> <p>1 A. Yes.</p> <p>2 Q. With respect to the Ramos case, you</p> <p>3 said to the media, "There's always going to be a</p> <p>4 vacuum for getting drugs illegally, and some of</p> <p>5 that vacuum will be filled by people getting the</p> <p>6 prescriptions their own way."</p> <p>7 Do you still agree with that</p> <p>8 statement?</p> <p>9 A. Yes.</p> <p>10 Q. And just as you've testified here</p> <p>11 today, you explained to the media, "There's</p> <p>12 always been a subsection of addicts that want</p> <p>13 prescription drugs and not street drugs."</p> <p>14 Do you still agree with that</p> <p>15 statement?</p> <p>16 A. I think I said that this morning.</p> <p>17 Q. You did.</p> <p>18 And, in your experience, addicts and</p> <p>19 criminals, like Ramos and Hicks, are willing to</p> <p>20 steal and lie and break the law in order to</p> <p>21 obtain prescription drugs, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And certainly as a prosecutor, you</p> <p>24 would agree with me that individuals who do</p> <p>25 break the law in order to obtain prescription</p>	<p style="text-align: right;">Page 204</p> <p>1 my experience, for me to do that.</p> <p>2 Q. Do you recall anything about the</p> <p>3 type of defendant you prosecuted in that case?</p> <p>4 A. No.</p> <p>5 Q. And have you ever seen counterfeit</p> <p>6 pills sold by legitimate pharmacies?</p> <p>7 A. No.</p> <p>8 Q. Have you ever seen counterfeit pills</p> <p>9 distributed by legitimate distributors?</p> <p>10 A. No.</p> <p>11 Q. Have internet sales of prescription</p> <p>12 opioids ever been a problem in Cuyahoga County?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. It was initially in the early 2000s</p> <p>15 when the internet started to come on, but</p> <p>16 federal regulations cut that off.</p> <p>17 Q. Are you aware of opioids that have</p> <p>18 entered your county from abroad? And when I say</p> <p>19 "opioids," I'm referring broadly to heroin as</p> <p>20 well as prescription opioids.</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. I have no knowledge of that but for</p> <p>23 what I read in the papers.</p> <p>24 Q. Based on conversations with</p> <p>25 colleagues and law enforcement agents, have you</p>
<p style="text-align: right;">Page 203</p> <p>1 drugs deserve to be held accountable?</p> <p>2 A. Yes, and so do other people.</p> <p>3 Q. Do you know how many cases involving</p> <p>4 doctor shopping your office has prosecuted over</p> <p>5 the years?</p> <p>6 MR. SPELLACY: Objection.</p> <p>7 A. No.</p> <p>8 Q. Are you aware of any efforts your</p> <p>9 office has undertaken to prevent citizens from</p> <p>10 attempting to doctor shop?</p> <p>11 MR. SPELLACY: Objection.</p> <p>12 A. Not my office.</p> <p>13 MR. SPELLACY: Can we break when</p> <p>14 it's convenient for you?</p> <p>15 MS. WOODS: Yes.</p> <p>16 Q. Has your office prosecuted cases</p> <p>17 involving counterfeit pills sold as prescription</p> <p>18 opioids that were actually something else?</p> <p>19 MR. SPELLACY: Objection.</p> <p>20 A. Personally, I've maybe done one of</p> <p>21 those cases. I can't remember.</p> <p>22 Q. Do you recall how long ago?</p> <p>23 A. No, I don't.</p> <p>24 Q. Or the defendant's name?</p> <p>25 A. No. It's very unusual, at least in</p>	<p style="text-align: right;">Page 205</p> <p>1 learned of any instances in which opioids made</p> <p>2 their way into the county from foreign</p> <p>3 countries?</p> <p>4 A. From conversations with -- over the</p> <p>5 years with NDO prosecutors, yeah.</p> <p>6 Q. Did those conversations make you</p> <p>7 aware that Mexican drug organizations are</p> <p>8 responsible for much of the heroin in the</p> <p>9 county?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I don't recall that. I recall</p> <p>12 hearing about China.</p> <p>13 Q. And what did you hear about China?</p> <p>14 A. That they're a source of illegal</p> <p>15 drugs that come into the United States.</p> <p>16 Q. And specifically did you learn that</p> <p>17 China drug cartels are responsible for much of</p> <p>18 the fentanyl and carfentanil?</p> <p>19 A. I know that.</p> <p>20 MR. SPELLACY: Objection.</p> <p>21 Q. You did or did not?</p> <p>22 A. I do from going to those seminars</p> <p>23 that I told you about.</p> <p>24 Q. In fact, did you learn at those</p> <p>25 seminars that the illicit manufacture and</p>

<p style="text-align: right;">Page 206</p> <p>1 illegal importation of fentanyl comes almost 2 exclusively from China?</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. I just remember that China was a big 5 player in that area.</p> <p>6 Q. Are you able to approximate what 7 percent of the opioid problems in your county 8 can be traced to international drug 9 organizations?</p> <p>10 MR. SPELLACY: Objection.</p> <p>11 A. I can't answer that.</p> <p>12 Q. Do you know whether opioids, 13 including prescription opioids, come into your 14 county from other states and other cities --</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 Q. -- outside your jurisdiction?</p> <p>17 A. Yes.</p> <p>18 Q. What do you know about that?</p> <p>19 A. There has been some cases where we 20 know that the opioids are coming from Detroit.</p> <p>21 Q. And how do you know that to be the 22 case?</p> <p>23 A. Investigations.</p> <p>24 Q. What specific evidence in the 25 investigation has led you to conclude that the</p>	<p style="text-align: right;">Page 208</p> <p>1 situations. I am not aware of any of that.</p> <p>2 MS. WOODS: This is a good time for 3 a break.</p> <p>4 THE VIDEOGRAPHER: Off the record, 5 1:54.</p> <p>6 (Recess had.)</p> <p>7 THE VIDEOGRAPHER: On the record, 8 2:10.</p> <p>9 BY MS. WOODS:</p> <p>10 Q. So we've been talking today about 11 prescription opioid abuse problems in Cuyahoga 12 County.</p> <p>13 Do you believe that the county's 14 problem has one cause or multiple causes?</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 A. Well, that's a complex -- that's a 17 complex question to -- for a simple answer. I 18 can tell you this. I believe that the 19 distributors and the manufacturers are a major 20 part of the problem.</p> <p>21 Q. What else is a part of the problem?</p> <p>22 A. Socioeconomics.</p> <p>23 Q. Are doctors unlawfully prescribing 24 opioids for no medical purpose part of the 25 problem?</p>
<p style="text-align: right;">Page 207</p> <p>1 opioid came from Detroit?</p> <p>2 A. Just from individuals that we have 3 talked to in the course of some investigations.</p> <p>4 Q. And what specific type of opioids 5 have been coming from Detroit?</p> <p>6 A. What were they? They were either 7 Percocet or OxyContin, one of the two, some 8 oxycodone derivative. So an oxycodone 9 derivative. It could be OxyContin. It could be 10 Percocet. So I'm just giving you a general. 11 I'm not sure.</p> <p>12 Q. Do you know the total number of 13 opioids that came into your county from Detroit 14 or from other locations outside your 15 jurisdiction?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. No.</p> <p>18 Q. Can you approximate?</p> <p>19 MR. SPELLACY: Objection.</p> <p>20 A. No.</p> <p>21 Q. Has your office -- does your office 22 take any steps to prevent the entry of illicit 23 drugs from outside your jurisdiction?</p> <p>24 A. Again, we are a reactive 25 organization, so we react to complaints and to</p>	<p style="text-align: right;">Page 209</p> <p>1 A. Look, you know, you've given me 2 examples like cartels, you know, from China and 3 Mexico who bring the stuff in --</p> <p>4 Q. Did you understand the question I 5 asked?</p> <p>6 A. Yes.</p> <p>7 Q. In your opinion, are doctors who 8 unlawfully prescribe opioids for no medical 9 purpose part of the problem?</p> <p>10 MR. SPELLACY: Counsel, don't 11 interrupt the witness when he's talking. He 12 hasn't interrupted you all day. Don't interrupt 13 him, please.</p> <p>14 A. Yes, they are, and they have been 15 prosecuted and held responsible for their 16 actions, whereas now you guys are.</p> <p>17 Q. Are pharmacists who unlawfully 18 dispense prescription opioids also part of the 19 problem?</p> <p>20 A. I'm going to answer the question 21 because you're going to keep going down this 22 line. From you guys distributing, to giving the 23 drugs, to the doctors illegally prescribing it, 24 to the pharmacists filling it, to the patients 25 taking it, it's all a part of the chain.</p>

<p style="text-align: right;">Page 210</p> <p>1 Q. So pharmacists are a contributing 2 factor?</p> <p>3 A. Yes, ma'am. The ones that act 4 illegally.</p> <p>5 Q. You mentioned international drug 6 cartels. Do they play some role in the problem?</p> <p>7 MR. SPELLACY: Objection.</p> <p>8 A. What problem? Opioid problem?</p> <p>9 Q. The opioid abuse problem in Cuyahoga 10 County.</p> <p>11 A. Okay. Are you talking about street 12 drugs as well as prescription drugs?</p> <p>13 Q. I'm talking about opioids, the 14 opioid abuse problem that is occurring in 15 Cuyahoga County.</p> <p>16 A. I can't answer that question unless 17 you're going to be more specific with the 18 question, okay.</p> <p>19 Q. I'll rephrase the question.</p> <p>20 A. Thank you.</p> <p>21 Q. In your opinion, are international 22 drug cartels a contributing cause to the opioid 23 abuse problem in Cuyahoga County?</p> <p>24 A. When it relates to street drugs, I 25 would say yes.</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. Do you have any opinion as to 2 whether the Drug Enforcement Administration 3 contributed to the problem by registering 4 pharmacists and doctors to dispense controlled 5 substances and continuing to allow them to do so 6 even as they were unlawfully prescribing and 7 dispensing them?</p> <p>8 A. I don't really understand that 9 question. You're asking me if the DEA was part 10 of the problem because they licensed physicians 11 and gave prescription authority for these 12 physicians?</p> <p>13 Q. That's correct. That is my 14 question.</p> <p>15 A. No. The Drug Enforcement 16 Administration is not the problem because they 17 licensed lawful individuals to do lawful things.</p> <p>18 Q. Despite the fact that some of those 19 doctors that the DEA licensed did unlawful 20 things, correct?</p> <p>21 A. I can't answer that.</p> <p>22 Q. You would not hold the DEA 23 responsible simply because one of its 24 registrants broke the law?</p> <p>25 MR. SPELLACY: Objection.</p>
<p style="text-align: right;">Page 211</p> <p>1 Q. And by street drugs do you mean 2 heroin?</p> <p>3 A. I mean all drugs that you can't get 4 with a prescription.</p> <p>5 Q. Including counterfeit prescription 6 drugs, for example?</p> <p>7 A. If that's the case.</p> <p>8 Q. In your opinion, is the Federal Drug 9 Administration a cause of the opioid abuse 10 problem in Cuyahoga County because it concluded 11 that prescription opioids were less addictive 12 than they are?</p> <p>13 A. Well, wait a minute. Let's break 14 down that question because I don't really 15 understand it.</p> <p>16 You're telling me the FDA said that 17 what?</p> <p>18 Q. The FDA -- my question is, is it 19 your opinion that the FDA contributed to the 20 opioid abuse problem because they concluded that 21 prescription opioids were, in fact, less 22 addictive than they truly are?</p> <p>23 A. I have no knowledge of that 24 statement by the FDA so I cannot answer that 25 question.</p>	<p style="text-align: right;">Page 213</p> <p>1 A. No.</p> <p>2 Q. Are patients who improperly use 3 prescription opioids that were properly 4 prescribed to them a contributing factor in 5 Cuyahoga County's abuse problem?</p> <p>6 MR. SPELLACY: Objection.</p> <p>7 A. If prescriptions were properly 8 prescribed and legally prescribed, that's not a 9 problem. The problem is when they're illegally 10 prescribed and illegally got.</p> <p>11 Q. So you don't consider it to be a 12 problem if a patient improperly uses the 13 prescription opioids that have been properly 14 prescribed?</p> <p>15 A. Define problem.</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. What do you mean by "problem"?</p> <p>18 Q. You don't believe it is a 19 contributing factor in creating opioid abuse 20 problems here in your county?</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. The patients, no.</p> <p>23 Q. In your opinion, are insurers and/or 24 Medicaid a cause of the opioid abuse problem in 25 Cuyahoga County because they encourage doctors</p>

<p style="text-align: right;">Page 214</p> <p>1 to prescribe opioids over alternative treatment 2 by making opioids cheaper than alternative forms 3 of therapy?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. In my business we call that assuming 6 facts in evidence. I don't know any of those 7 facts that are contained within that question so 8 I cannot answer that.</p> <p>9 Q. You have no opinion on that matter?</p> <p>10 A. I cannot answer it. It's not that I 11 don't have an opinion. I cannot answer it. I 12 don't know the fundamental background facts that 13 you're -- that you're telling me.</p> <p>14 Q. Are you aware that the Drug 15 Enforcement Administration sets maximum 16 production quotas for manufacturers of 17 prescription opioids?</p> <p>18 A. I do not know that.</p> <p>19 Q. So you're not aware that the DEA 20 routinely raised those quotas over the years?</p> <p>21 A. I have no knowledge of that.</p> <p>22 Q. Certainly criminals who sell 23 prescription opioids on the street are a part of 24 the cause of the opioid abuse problem in 25 Cuyahoga County, correct?</p>	<p style="text-align: right;">Page 216</p> <p>1 A. Are those illegal substances 2 opioids?</p> <p>3 Q. That falls under illegal substances 4 certainly, but other drugs also fall under 5 illegal substances.</p> <p>6 A. Right.</p> <p>7 Q. In those situations, would you agree 8 with me that those drug dealers victimize the 9 county and the state?</p> <p>10 A. Of course they do.</p> <p>11 Q. With whom have you discussed the 12 causes of the opioid abuse problem?</p> <p>13 A. My boss, Michael O'Malley. My 14 supervisor, Paul Soucie. Members of my unit. A 15 couple speakers at seminars I went to. I can't 16 -- don't remember their names.</p> <p>17 Q. You testified earlier that you 18 attended a seminar in which you learned about 19 the allegations in this litigation.</p> <p>20 Do you remember that?</p> <p>21 A. Oh, yeah.</p> <p>22 Q. When did you attend that particular 23 seminar?</p> <p>24 A. Probably the summer of 2016.</p> <p>25 Q. And who sponsored the seminar?</p>
<p style="text-align: right;">Page 215</p> <p>1 A. Because they can get the drugs, 2 because you supply them, yes.</p> <p>3 Q. In your cases involving doctors, you 4 previously made statements publicly that those 5 doctors had victimized not just their patients 6 but the county as a whole. Do you stand by 7 those statements?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And do you believe that dealers of 10 illegal substances victimize Cuyahoga County and 11 the State of Ohio?</p> <p>12 MR. SPELLACY: Objection.</p> <p>13 A. You mean dealers of scrips, opioid 14 scrips --</p> <p>15 Q. Yes.</p> <p>16 A. -- because I want to be specific 17 what we're talking about, okay. If you're 18 talking about dealers who get prescription 19 opioids illegally and sell them -- is that what 20 you're saying?</p> <p>21 Q. My question was about illegal 22 substances broadly --</p> <p>23 A. Okay.</p> <p>24 Q. -- and individuals who deal in 25 illegal substances.</p>	<p style="text-align: right;">Page 217</p> <p>1 A. I think the DEA did. I'm not sure. 2 I think the DEA did.</p> <p>3 Q. Who attended the seminar?</p> <p>4 A. What do you mean, who attended? I 5 did.</p> <p>6 Q. Who were the participants other than 7 you?</p> <p>8 A. There were people from all over the 9 country there, prosecutors, investigators.</p> <p>10 Q. And what was the topic of this 11 seminar?</p> <p>12 A. One of the topics was -- is how -- 13 and I say you guys -- I mean distributors and 14 manufacturers -- how you created this whole 15 market and marketed all this stuff so you could 16 make a ton of money on the backs and the blood 17 of people at least in our county.</p> <p>18 Q. That was one of the topics of this 19 seminar?</p> <p>20 A. One of the topics was how you guys 21 had your marketing campaign and how you guys 22 marketed all these drugs, tried to downplay how 23 they were dangerous, tried to tell everybody 24 they weren't addictive, things of --</p> <p>25 Q. Do you know that --</p>

<p style="text-align: right;">Page 218</p> <p>1 MR. SPELLACY: Counsel, I'll caution 2 you not to interrupt him. 3 A. I'm just saying when I say "you 4 guys," I mean distributors and manufacturers. 5 Q. Okay. Who presented on this topic? 6 A. It was a -- it was a prosecutor, a 7 county prosecutor from Minnesota, who, by the 8 way, I think is suing. 9 Q. What was the person's name? 10 A. I don't have it with me. I have his 11 card at my office. 12 Q. How many people attended this 13 particular topic discussion? 14 A. I would say about 50 or 60. 15 Q. Where was this located? 16 A. In downtown Cleveland. 17 Q. Did you take notes during the 18 presentation? 19 A. No. I don't have any -- I don't 20 have any -- I don't have any materials from 21 that, except I think I have the guy's business 22 card that presented that part of it. 23 Q. And did that particular individual 24 use a PowerPoint presentation or some other 25 means?</p>	<p style="text-align: right;">Page 220</p> <p>1 pills are in, okay. We try to backtrack to 2 where the source of those pills are. If they're 3 in a baggie or some type of thing that doesn't 4 have any way to track it, unless he tells us 5 where he gets the pills, we're not going to 6 know. 7 Q. Okay. So you would look to the 8 container to see if that would provide a lead to 9 who obtained the prescription? 10 A. Exactly. 11 Q. Who it was written for? 12 A. Right. 13 Q. If that didn't work, you would 14 attempt to interview the subject? 15 A. Correct. 16 Q. If you found out where that person 17 got the pills, would you then take steps to 18 figure out where that other person got the pills 19 from? In other words, would you follow the 20 chain -- 21 A. Yes. 22 Q. -- up to the original source, if 23 possible? 24 A. Yes. And if we -- let's say we 25 found a pill bottle that had a doctor on it. We</p>
<p style="text-align: right;">Page 219</p> <p>1 A. Oh, yeah. 2 Q. Did you obtain a copy of the 3 PowerPoint presentation or any -- 4 A. No. 5 Q. -- other materials? 6 A. No. I'm sure I had some materials 7 that you get with a seminar. More than likely I 8 threw them out. 9 Q. And had that particular prosecutor 10 investigated or prosecuted any of the entities 11 or individuals about whom he was presenting? 12 A. He didn't criminally prosecute, but 13 I think that they were suing them civilly. 14 Q. When police in your county arrest an 15 individual and find that they have a stash of 16 prescription pills for which they don't have a 17 valid prescription, what steps, if any, are 18 taken to find out where the person got the 19 pills? 20 A. So you're giving me a fact pattern 21 where police arrest an individual with, you say, 22 stash, but a number of pills that he doesn't 23 have a prescription for? 24 Q. Um-hum. 25 A. Well, it depends what container the</p>	<p style="text-align: right;">Page 221</p> <p>1 would then start looking at the doctor. 2 Q. Okay. And how do you -- as you 3 follow that chain, how do you decide when to 4 stop? 5 A. Based upon the evidence, where the 6 evidence takes us. 7 Q. And if the evidence took you all the 8 way to the individual patient that was 9 prescribed the medication by a particular 10 doctor, would that end your inquiry as to the 11 source of the pills? 12 A. Let me make sure I understand you. 13 I have the pills and we trace the pills to you, 14 who got it from a prescription. 15 Q. Yes. 16 A. Well, we would talk to you. 17 Q. Okay. 18 A. And if you told us to go pound salt, 19 then we would start looking at the doctor. We 20 would start getting intel out there to see if, 21 in fact, this doctor was giving other 22 individuals -- as I indicated to you before, we 23 have high writers, so we kind of know if the 24 doctor is on our radar, so to speak. 25 Q. Okay. Do you attempt to trace the</p>

<p>1 pill all the way up the chain to the 2 manufacturer?</p> <p>3 A. No.</p> <p>4 Q. In your --</p> <p>5 A. Now, let me qualify that. If we 6 have a situation where the individual doctor is 7 dispensing from his office, we will look at the 8 orders he has from the distributors. But that's 9 very rare, to be honest with you, like I told 10 you.</p> <p>11 Q. Okay. And why, in your opinion, is 12 it important for law enforcement purposes to try 13 to determine the source, the patient who 14 obtained -- who was supposed to obtain those 15 prescription pills that you've recovered from 16 someone else?</p> <p>17 A. Because we don't want the diversion 18 of the drugs out on the streets.</p> <p>19 Q. Are there policies used by law 20 enforcement in your county on tracing where the 21 pills come from as part of any investigation 22 involving prescription opioids?</p> <p>23 A. You know, again, you ask general 24 questions, and trying to give a specific answer 25 to those general questions is very hard to do.</p>	Page 222	<p>1 Q. And the pharmacy didn't do anything 2 wrong?</p> <p>3 A. Correct.</p> <p>4 Q. And the distributor didn't do 5 anything wrong?</p> <p>6 A. Well, I would assume if it's for a 7 lawful prescription, correct.</p> <p>8 Q. What percentage of the time is law 9 enforcement able to determine the source of 10 prescription drugs?</p> <p>11 A. I don't understand your question.</p> <p>12 Q. In what percentage of the time are 13 you successful in determining the original 14 source of prescription drugs found on another 15 individual?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. I don't think I can answer that 18 question. It's all contextual.</p> <p>19 Q. Are there -- is there any data or 20 statistics kept on that question?</p> <p>21 A. Not that I know of.</p> <p>22 Q. If I wanted to try to determine the 23 answer to that question, can you think of any 24 records I could review that might answer the 25 question?</p>	Page 224
<p>1 Based upon the context, if we find individuals 2 that have prescription pills without the 3 appropriate prescription to back it up, then we 4 will investigate them.</p> <p>5 Q. So my question was, are there 6 policies, written or otherwise, you're aware of 7 that are implemented by law enforcement in your 8 county relating to the tracing of pills?</p> <p>9 A. I don't know if there's policies, 10 but I know there's protocols and processes that 11 investigators use as a routine basis in how they 12 investigate these cases.</p> <p>13 Q. What are those protocols and 14 processes?</p> <p>15 A. I explained to you, we try to 16 backtrack where these drugs came from, okay. 17 And, again, it's a matter of degree. If I get 18 30 Percocet and decide to give you ten, and the 19 doctor is a good doctor and the prescription was 20 legitimate and we just have a little context 21 there, then the investigation is not going to go 22 any further than that.</p> <p>23 Q. That's because in your estimation 24 the doctor didn't do anything wrong?</p> <p>25 A. Correct.</p>	Page 223	<p>1 A. No, because you would have to go 2 into individual files of all the police 3 departments investigating this to determine 4 that.</p> <p>5 Q. What incentives can your office 6 offer to encourage cooperation of the individual 7 who was in possession of those pills that you're 8 trying to trace?</p> <p>9 A. For them to cooperate with us you 10 mean? Everybody wants to make a deal, so it 11 depends how much we get them for and things of 12 that nature. I mean, you were a prosecutor. 13 You know what I'm talking about.</p> <p>14 Q. I do know, but we need the record to 15 be established, so let's be a little bit clearer 16 about this.</p> <p>17 So some incentives that you could 18 give a person to encourage their cooperation 19 might be an agreement not to prosecute?</p> <p>20 A. Or a lesser offense, right. That's 21 the only leverage we have.</p> <p>22 Q. Does your office have any policies, 23 either written or otherwise, governing the 24 instances in which you can offer cooperators 25 those incentives?</p>	Page 225

<p>Page 226</p> <p>1 A. Usually you have to talk to your 2 supervisor about, as we say in the business, 3 rolling somebody, so before I roll somebody, I 4 have to go to my boss and say, here's what I 5 want to do and this is why I want to do it. 6 There's nothing written down. That's just -- 7 how should I say -- established, not policy but 8 established -- what's the word I'm looking 9 for -- behavior.</p> <p>10 Q. Practice?</p> <p>11 A. Practice. Thank you.</p> <p>12 Q. So have there been occasions in 13 which your supervisor has overruled your attempt 14 to cooperate with a particular individual?</p> <p>15 A. No.</p> <p>16 Q. How many times have you entered into 17 cooperation agreements in cases involving 18 prescription opioids?</p> <p>19 A. With the patients?</p> <p>20 Q. With any individuals, whether it be 21 a patient or a doctor or a pharmacist.</p> <p>22 A. I think in every case that I've done 23 that we've done that.</p> <p>24 Q. So would you say you've probably 25 entered into hundreds of cooperation agreements?</p>	<p>Page 228</p> <p>1 supervisor's approval for entering into a 2 cooperation agreement. Do you also need your 3 supervisor's approval to indict a case?</p> <p>4 A. Technically, yes.</p> <p>5 Q. And how does your office go about 6 deciding which cases to investigate or indict?</p> <p>7 A. Well, typically if I get information 8 from one of my investigative agencies, I will 9 inform my supervisor we have this case and that 10 it looks good so let's work it up.</p> <p>11 Q. And I think you stated earlier your 12 office doesn't have like a written 13 policy/procedures manual regarding the charging 14 decisions?</p> <p>15 A. Correct.</p> <p>16 Q. Do you have any policies regarding 17 violations of Ohio Controlled Substances Act 18 prosecutions or investigations?</p> <p>19 A. What do you mean by that?</p> <p>20 Q. Do you have any written policies 21 regarding your office's prosecution under the 22 Ohio Controlled Substances Act?</p> <p>23 A. Not that I know of.</p> <p>24 Q. What type of documents do you 25 receive from your law enforcement agencies</p>
<p>Page 227</p> <p>1 A. Yes.</p> <p>2 Q. And, in your experience, did that 3 assist you in successfully identifying suppliers 4 of the prescription drugs?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware of any case you've 7 prosecuted in which prescription opioids were 8 traced back to one of the Distributor Defendants 9 in this case? That would be like a McKesson 10 Corporation or Cardinal.</p> <p>11 A. I want to say yes, but I can't 12 remember.</p> <p>13 Q. Does your department attempt to 14 develop any kind of statistics on where the 15 opioids you encounter are coming from?</p> <p>16 A. No.</p> <p>17 Q. Does your department separately 18 track arrests associated with different types of 19 opioids, for example, prescription pills versus 20 heroin versus fentanyl?</p> <p>21 A. Not that I know of.</p> <p>22 Q. Do you know if anyone tracks this 23 information?</p> <p>24 A. I don't know.</p> <p>25 Q. You spoke about needing your</p>	<p>Page 229</p> <p>1 concerning potential investigations or 2 prosecutions?</p> <p>3 A. Well, they will give me their field 4 reports.</p> <p>5 Q. Do they fill out any sort of 6 referral one-pager or other document to first 7 introduce you to a new investigation?</p> <p>8 A. Not that I know of.</p> <p>9 Q. And when you say "field report," 10 what are you referring to?</p> <p>11 A. Meaning an investigator will come in 12 and say, Hey, we think this doctor is bad. I 13 go, Okay. What do you got? And they'll tell me 14 what they've done and then they'll give me their 15 reports to that point, and then we'll sit down 16 and figure out a game plan on how we're going to 17 crack that nut.</p> <p>18 Q. And are those field -- how are those 19 field reports maintained by your office?</p> <p>20 A. They're in the case files, which 21 then end up on -- should end up in Justice 22 Matters, will end up. At least in my cases they 23 do.</p> <p>24 Q. So I know not every case is complex 25 enough to justify preparation of a prosecution</p>

<p style="text-align: right;">Page 230</p> <p>1 memo, but in your experience have you ever 2 prepared a prosecution memo summarizing your 3 case?</p> <p>4 A. We're not the feds. We don't have 5 to do that. Verbally is what we -- we sit down 6 and verbalize.</p> <p>7 Q. What about a declination memo; have 8 you ever prepared a memo detailing why a 9 particular case was declined?</p> <p>10 A. I can't recall if I did one or not.</p> <p>11 Q. To your knowledge, has your office 12 ever declined a case involving opioids because 13 it lacked sufficient resources to prosecute the 14 case?</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. To what extent does your office 18 consider the views of government officials, 19 victims or interested parties in deciding 20 whether to prosecute a particular case?</p> <p>21 MR. SPELLACY: Objection.</p> <p>22 A. I don't think any of those people 23 have any influence on our charging decisions.</p> <p>24 Q. They don't affect your decisions --</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 232</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And would that sort of 3 information be included in the Justice 4 Matters --</p> <p>5 A. Yes, it would be in the Justice 6 Matters.</p> <p>7 Q. Or prior to 2009, it would be in 8 hard copy?</p> <p>9 A. Hard file.</p> <p>10 Q. To what extent does your office 11 share responsibilities or coordinate with other 12 law enforcement departments on opioid-related 13 activities?</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 A. We try to work together with all 16 sorts of law enforcement agencies, both state, 17 federal and local, to tackle this issue that -- 18 problem, crisis, however you want to call it, 19 and do this.</p> <p>20 Q. Are there any memoranda of 21 understanding or similar agreements on this 22 subject?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Do you know if there are any cost 25 reimbursement or cost sharing agreements?</p>
<p style="text-align: right;">Page 231</p> <p>1 Q. -- about how to proceed?</p> <p>2 A. The evidence does.</p> <p>3 Q. If you were to receive input from 4 any of those parties, would you keep records of 5 those communications in the case file?</p> <p>6 A. I find that question just silly 7 again, because we don't do that. So if I don't 8 do something, why would I keep any documentation 9 about doing that?</p> <p>10 Q. Okay. So maybe you misunderstood my 11 question.</p> <p>12 A. Okay.</p> <p>13 Q. Let me rephrase it.</p> <p>14 A. Okay.</p> <p>15 Q. If a victim, let's say --</p> <p>16 A. Okay.</p> <p>17 Q. -- writes a letter to the Cuyahoga 18 County Prosecutor's Office advocating for a 19 particular action with respect to a particular 20 case and you receive that letter --</p> <p>21 A. Okay.</p> <p>22 Q. -- even if it does not influence 23 your decisions with regard to that case, would 24 you maintain that communication from that victim 25 somewhere in the case file?</p>	<p style="text-align: right;">Page 233</p> <p>1 A. There is nothing in writing, but, 2 for example, if we do a case with the pharmacy 3 board, we will split costs sometimes on the 4 expert, and if we get a forfeiture on it, for 5 example, we will then split the proceeds of the 6 forfeiture, too.</p> <p>7 Q. To your knowledge, does your office 8 receive any grants from government agencies?</p> <p>9 A. I don't know that. I'm not the guy 10 to ask on that one.</p> <p>11 Q. Does your office interact with state 12 or federal government, such as the Ohio Attorney 13 General's Office?</p> <p>14 A. Yes. We -- yes, we do.</p> <p>15 Q. And do you personally interact with 16 state or federal government officials?</p> <p>17 A. Yeah.</p> <p>18 Q. Is it true that in Ohio the AG's 19 offices has limited jurisdiction and has to be 20 invited into a county to assist or to prosecute 21 a case?</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. I believe -- I believe so. I'm not 24 sure on that, though.</p> <p>25 Q. Have you ever had occasion to call</p>

<p style="text-align: right;">Page 234</p> <p>1 in a special prosecutor from the Ohio Attorney 2 General's Office to assist you in any of your 3 cases?</p> <p>4 A. In my cases, no, but I know in other 5 cases, yes.</p> <p>6 Q. How many other cases are you aware 7 of?</p> <p>8 A. What, that we bring in a -- the AG's 9 office or --</p> <p>10 Q. Yes.</p> <p>11 A. Because sometimes we have another 12 prosecutor from the county when they're 13 conflicted. When there's a conflict, we have 14 either another county prosecutor come in to do 15 it or the AG's office. They do have a 16 specialized unit that does litigation for 17 conflicted cases.</p> <p>18 Q. And, to your knowledge, have any of 19 those special prosecutors that have come in 20 assisted with prosecutions related to opioids?</p> <p>21 A. Not that I know of.</p> <p>22 Q. What geographic territory does your 23 office cover?</p> <p>24 A. Just Cuyahoga County.</p> <p>25 Q. Do you know how many residents fall</p>	<p style="text-align: right;">Page 236</p> <p>1 caseload has been in recent years?</p> <p>2 A. I know our indictments have 3 decreased.</p> <p>4 Q. Do you know if your office tracks 5 prosecutions related to opioids specifically?</p> <p>6 A. I do not know that.</p> <p>7 Q. Do you know whether cases related to 8 opioids are tracked with a specific offense code 9 in any of your databases?</p> <p>10 A. I do not know that.</p> <p>11 Q. Does your county office track the 12 recidivism rate of individuals it convicts?</p> <p>13 A. That, I don't know.</p> <p>14 Q. And then I think I know the answer 15 to this question but I have to ask it anyway. 16 Does the county track the recidivism rate of 17 convicted prescription opioid diverters?</p> <p>18 A. That, I don't know.</p> <p>19 Q. With respect to the use of the OARRS 20 data we discussed earlier --</p> <p>21 A. Okay.</p> <p>22 Q. -- does the county monitor 23 prescribers in Cuyahoga County for compliance 24 with the requirement that they consult OARRS 25 prior to prescribing a prescription opioid?</p>
<p style="text-align: right;">Page 235</p> <p>1 under your jurisdiction?</p> <p>2 A. What is it, 1.2, 1.3 million in this 3 county? I'm not sure. Over a million.</p> <p>4 Q. What is your relationship between 5 the county and municipal law departments with 6 respect to your jurisdiction?</p> <p>7 A. Not much. They make the initial 8 charging decisions, and if they're felonies, 9 then they go through the process.</p> <p>10 Q. Okay. Does the Cuyahoga County 11 Prosecutor's Office handle all cases involving 12 drugs and narcotic offenses that take place 13 within your county?</p> <p>14 A. No. The feds will do their thing.</p> <p>15 Q. Other than the feds, can a defendant 16 move through the judicial process with respect 17 to a drug or narcotic charge without someone 18 from your office handling the case?</p> <p>19 A. Not if it's local, no. We're the 20 people to do it.</p> <p>21 Q. How does your office track its 22 caseload?</p> <p>23 A. I have no idea how they count the 24 numbers.</p> <p>25 Q. Do you have some sense of what the</p>	<p style="text-align: right;">Page 237</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 A. That particular function is by the 3 pharmacy board.</p> <p>4 Q. Okay. So it's not something that 5 your office does?</p> <p>6 A. No. The pharmacy board does that.</p> <p>7 Q. To your knowledge, has your office 8 ever prosecuted a doctor for failing to consult 9 OARRS prior to prescribing a prescription 10 opioid?</p> <p>11 A. To my knowledge, no.</p> <p>12 Q. Do you know if the Board of Pharmacy 13 or the Board of Medicine has ever disciplined a 14 doctor for failing to consult OARRS prior to 15 prescribing a prescription opioid?</p> <p>16 A. Let's go back to that other 17 question.</p> <p>18 I don't think that failure is a 19 criminal offense, I think it might be an 20 administrative offense, so that would be the 21 pharmacy board again.</p> <p>22 I'm sorry. Your second question 23 was?</p> <p>24 Q. So then my question was, are you 25 aware of any instances in which the pharmacy</p>

<p style="text-align: right;">Page 238</p> <p>1 board has disciplined a doctor for not checking 2 OARRS prior to prescribing prescription opioids? 3 MR. SPELLACY: Objection. 4 A. I know in some of my cases the 5 doctors have not done that. I don't know what 6 the administrative action is after that, but I 7 know that that has been part of some of my 8 cases. 9 Q. Okay. When you've uncovered that in 10 your cases, is that the sort of evidence or 11 information that you would forward on to the 12 Board of Pharmacy to make sure that they were 13 aware of that conduct? 14 A. If they were not part of the case, 15 yes. 16 Q. And when you forward such 17 information to the Board of Pharmacy, do you 18 keep records of that communication? 19 A. Well, let's put things in context. 20 Most -- 99.9 percent of the time it's the Board 21 of Pharmacy that are bringing me the doctor 22 cases, so they already know the information. 23 So, to answer the question, I don't believe so. 24 I don't know of no -- no tracking of that 25 communication.</p>	<p style="text-align: right;">Page 240</p> <p>1 OARRS database to aid its prosecutions? 2 A. When OARRS first came out in 2010 -- 3 and, again, you have to understand the function 4 and the ability of OARRS has changed over the 5 years. There's more information, more 6 requirements and things of that nature. I am 7 not up on all of that. All I do is use that as 8 an investigative tool to look at patterns. And 9 that's what my investigators do. They will look 10 at the OARRS and bring it to me and say, Look 11 what we got. 12 Q. And, in your experience, has OARRS 13 been a helpful tool? 14 A. Oh, absolutely. 15 Q. And, in your experience, when did 16 you first recall hearing that OARRS data was 17 being used to support or -- 18 A. When it first came out. 19 Q. 2010? 20 A. Yes. Because the -- when the 21 pharmacy -- they're the ones that got it going. 22 They're the ones that maintain it. And over the 23 years they're the ones that have evolved it. 24 Q. How is your office's budget created? 25 A. No idea.</p>
<p style="text-align: right;">Page 239</p> <p>1 Q. Okay. Do you know if the county has 2 ever obtained the identities of the top 3 physician prescribers of prescription opioids 4 practicing in Cuyahoga County? 5 A. The county hasn't, but I know the 6 DEA and the pharmacy board and the local 7 diversion investigators have. 8 Q. And that's that list that we talked 9 about earlier? 10 A. Yes, which is fluid and changes. 11 Q. And how often do you receive updated 12 lists or information? 13 A. I don't receive a list. It's all 14 verbal. 15 Q. How often do you receive updated 16 information? 17 A. Well, again, just they will call and 18 say, Hey, Dr. Joe is -- looks like he's, you 19 know, being a bad boy. 20 Q. And what sort of follow-up are you 21 able to do at that time? 22 A. Well, at that point in time it's 23 like do we have a case. If you think it's worth 24 it, let's start working it. 25 Q. When did the county start using the</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Do you know who is primarily 2 responsible for creating the budget? 3 A. I would assume the elected county 4 prosecutor. 5 Q. Do you know the methodology behind 6 the budget process? 7 A. No, ma'am. The only thing I know is 8 we're underpaid. 9 Q. So you don't know what steps must be 10 taken for the budget to be approved? 11 A. It has to go in front of county 12 council. 13 Q. And do you know what supporting 14 documents are prepared or reviewed during the 15 budget process? 16 A. No, I don't, ma'am. 17 Q. Do you know what quantitative and 18 qualitative factors are considered during the 19 budget process? 20 A. No, ma'am. 21 Q. Do you know if your office has its 22 own accounting system? 23 A. I don't know that. I would assume 24 they do. I don't know. 25 Q. Do you know your office's total</p>

<p style="text-align: right;">Page 242</p> <p>1 operating budget for this year approximately?</p> <p>2 A. No, I don't. I really don't. I</p> <p>3 know it's over a million.</p> <p>4 Q. Do you know how it's changed, if at</p> <p>5 all, over the past five years?</p> <p>6 A. No, I don't, ma'am.</p> <p>7 Q. Do you know if your office has any</p> <p>8 particular budget line items that relate</p> <p>9 exclusively to opioids?</p> <p>10 A. I don't know that.</p> <p>11 Q. Do you know what portion of your</p> <p>12 office's budget for the past fiscal year was</p> <p>13 dedicated to drug investigations and</p> <p>14 prosecutions?</p> <p>15 A. I don't know that answer.</p> <p>16 Q. Remind me how many prosecutors your</p> <p>17 office currently has.</p> <p>18 A. I'd say over 200.</p> <p>19 Q. And do you -- do you know whether</p> <p>20 that number has changed in any significant way</p> <p>21 over the last ten years?</p> <p>22 A. I couldn't answer that. I do not</p> <p>23 know.</p> <p>24 Q. Currently how many prosecutors work</p> <p>25 on prescription opioid cases in your office?</p>	<p style="text-align: right;">Page 244</p> <p>1 A. We have one prosecutor in our unit</p> <p>2 that does the nurses, and then all the other</p> <p>3 prescription cases come through me and I'll</p> <p>4 determine whether I'm going to take them. If</p> <p>5 not, then I will give them to the other</p> <p>6 prosecutor, that then does take them.</p> <p>7 Q. But you don't have a sense of what</p> <p>8 percentage --</p> <p>9 A. No, because I don't -- I mean, I</p> <p>10 would have to look at their caseload and look at</p> <p>11 it.</p> <p>12 Q. Are you familiar with the</p> <p>13 restructuring that took place in your office in</p> <p>14 February of 2009 when it shifted to the</p> <p>15 community-based prosecution model?</p> <p>16 A. I know that we created regions.</p> <p>17 Q. How, if at all, did it change your</p> <p>18 office's approach to prosecutions in your</p> <p>19 experience?</p> <p>20 A. I don't believe it changed anything.</p> <p>21 Q. And how, in your experience, did it</p> <p>22 change the approach for drug crimes, if at all?</p> <p>23 A. I don't believe it changed anything.</p> <p>24 Q. Sitting here today, you don't know</p> <p>25 how many prosecutors in your office have active</p>
<p style="text-align: right;">Page 243</p> <p>1 A. I don't -- again, that's hard to</p> <p>2 tell because a lot of cases go through general</p> <p>3 felony.</p> <p>4 Q. And let's just talk about within</p> <p>5 your unit, the economic crimes unit. Within</p> <p>6 that unit how many of its six prosecutors work</p> <p>7 on cases involving prescription opioids?</p> <p>8 A. Three.</p> <p>9 Q. And you're one of them?</p> <p>10 A. Correct.</p> <p>11 Q. What percentage of your work is on</p> <p>12 cases involving prescription drug crimes?</p> <p>13 A. Again, regarding practitioners, 10</p> <p>14 to 20 percent.</p> <p>15 Q. And then with respect to the other</p> <p>16 two prosecutors in your unit who you know work</p> <p>17 on some prescription drug crimes --</p> <p>18 A. Yes.</p> <p>19 Q. -- if you were to estimate,</p> <p>20 approximately what percentage of their --</p> <p>21 A. I couldn't answer that question.</p> <p>22 Q. To your knowledge, do they work on</p> <p>23 prescription drug crime cases more, less or</p> <p>24 approximately the same as you?</p> <p>25 MR. SPELLACY: Objection.</p>	<p style="text-align: right;">Page 245</p> <p>1 cases involving diversion of prescription drugs?</p> <p>2 A. No. I don't know.</p> <p>3 Q. Do you know if your office has ever</p> <p>4 requested funding for additional prosecutors to</p> <p>5 work on prescription opioid cases?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you know if your office has ever</p> <p>8 requested funding for additional prosecutors to</p> <p>9 work on opioid cases more generally?</p> <p>10 A. I don't know.</p> <p>11 Q. What's the salary range for an</p> <p>12 assistant prosecutor in your office?</p> <p>13 MR. SPELLACY: Objection.</p> <p>14 A. Well, first they make us take a vow</p> <p>15 of poverty. I believe the starting salary is</p> <p>16 \$60,000.</p> <p>17 Q. Okay. And that's for someone with</p> <p>18 the minimal amount of experience?</p> <p>19 A. Yes. That's when you first come in,</p> <p>20 yes.</p> <p>21 Q. And as you progress through the</p> <p>22 ranks of seniority and -- what is the high range</p> <p>23 of the salary for someone in your office?</p> <p>24 A. I don't think -- I don't believe</p> <p>25 there's more than a handful of individuals in</p>

<p style="text-align: right;">Page 246</p> <p>1 our office that make over a hundred thousand 2 dollars a year that are not a supervisor, so the 3 majority of people in our office make less than 4 \$90,000. We're like school teachers, underpaid 5 and underappreciated.</p> <p>6 Q. Do you know if your office has 7 experienced a budget surplus in any of the 8 years?</p> <p>9 A. I've never heard of that. And it's 10 the county. Remember, the county gives us the 11 money.</p> <p>12 Q. Yes.</p> <p>13 Apart from the county, what are your 14 office's other sources of funding?</p> <p>15 A. I -- I don't know. I couldn't tell 16 you. I'm not part of that. I know we get 17 grants for certain things, but I couldn't tell 18 you.</p> <p>19 Q. Do you know if they're federal or 20 state grants?</p> <p>21 A. I don't know that. I assume they're 22 federal, but I don't know.</p> <p>23 Q. You mentioned earlier today that you 24 receive some funding from forfeitures; is that 25 correct?</p>	<p style="text-align: right;">Page 248</p> <p>1 a break right now.</p> <p>2 MR. SPELLACY: Great.</p> <p>3 THE VIDEOGRAPHER: Off the record,</p> <p>4 2:54.</p> <p>5 (Recess had.)</p> <p>6 THE VIDEOGRAPHER: On the record,</p> <p>7 3:10.</p> <p>8 - - - - -</p> <p>9 (Thereupon, Gutierrez Deposition 10 Exhibit 10, Cuyahoga County Office 11 of the Prosecutor 2015 Report to the 12 Public, Beginning Bates Number 13 CUYAH_012970490 - Marked 14 Confidential, was marked for 15 purposes of identification.)</p> <p>16 - - - - -</p> <p>17 (Thereupon, Gutierrez Deposition 18 Exhibit 11, Cuyahoga County Office 19 of the Prosecutor 2016 Report to the 20 Public, Beginning Bates Number 21 CUYAH_001368881 - Marked 22 Confidential, was marked for 23 purposes of identification.)</p> <p>24 - - - - -</p> <p>25 BY MS. WOODS:</p>
<p style="text-align: right;">Page 247</p> <p>1 A. On a particular case, yes.</p> <p>2 Q. Okay. And is that in both criminal 3 and civil cases?</p> <p>4 A. I know criminal.</p> <p>5 Q. Okay. Do you have a sense of the 6 amount that your office has received in criminal 7 forfeitures?</p> <p>8 MR. SPELLACY: Objection.</p> <p>9 A. I know we just take 20 percent of -- 10 so if we get a \$100,000 forfeiture, we take 20 11 grand.</p> <p>12 Q. Do you know where the rest of the 13 forfeiture goes?</p> <p>14 A. To the investigative agency or 15 agencies. They will split it if it's multiple 16 agencies, or one agency will get it.</p> <p>17 Q. And how is that forfeiture money 18 spent by your office?</p> <p>19 A. We have a law enforcement trust fund 20 that that -- so when somebody wants to go on a 21 seminar -- I know by law you can't put it into 22 salaries, so it's all for support. All the 23 seminars, any type of equipment, things of that 24 nature, is where that money goes.</p> <p>25 MS. WOODS: Let's go ahead and take</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. I've just handed you what's been 2 marked as Exhibit 10 and 11. These are two 3 Cuyahoga County Office of the Prosecutor reports 4 to the public.</p> <p>5 A. Um-hum.</p> <p>6 Q. Do you know how frequently the 7 prosecutor's office publishes an annual report 8 like this one?</p> <p>9 A. No, I don't. I didn't even know 10 that we did these two.</p> <p>11 Q. So you haven't seen these reports 12 before?</p> <p>13 A. No.</p> <p>14 I'm in the picture in Exhibit 10.</p> <p>15 Q. Do you know whether these reports 16 were published for prior years, years prior to 17 2015?</p> <p>18 A. I do not.</p> <p>19 Q. Or for the years 2017 onward?</p> <p>20 A. We have a different prosecutor, so I 21 don't know.</p> <p>22 Q. I want to ask you some questions 23 about your office's caseload --</p> <p>24 A. Okay.</p> <p>25 Q. -- over the years.</p>

<p style="text-align: right;">Page 250</p> <p>1 A. Okay.</p> <p>2 Q. Are you aware that there was an 18</p> <p>3 and a half percent decrease in the total crimes</p> <p>4 charged by your office between 2010 and 2014?</p> <p>5 A. It doesn't surprise me.</p> <p>6 Q. If you would turn to page 10.</p> <p>7 A. On Exhibit 10?</p> <p>8 Q. On Exhibit 10. That's the 2015</p> <p>9 report to the public.</p> <p>10 A. Um-hum.</p> <p>11 Q. In the top left corner of page 10 --</p> <p>12 A. Okay.</p> <p>13 Q. -- you see some charts, some graphs</p> <p>14 regarding crime trends.</p> <p>15 A. Um-hum.</p> <p>16 Q. And there's a statistic to the right</p> <p>17 of those that says, "18 and a half percent</p> <p>18 decrease in total crimes charged between 2010</p> <p>19 and 2014"?</p> <p>20 A. Correct. I see that.</p> <p>21 Q. Does that accord with your</p> <p>22 experience in the office?</p> <p>23 A. Yes.</p> <p>24 Q. This document also states that you</p> <p>25 have a 97 percent rate of cases being resolved</p>	<p style="text-align: right;">Page 252</p> <p>1 more pre-indictment type of programs.</p> <p>2 Q. Did you agree with those changes?</p> <p>3 MR. SPELLACY: Objection.</p> <p>4 A. Generally speaking, yeah. I mean,</p> <p>5 I'll give you an example. For nurses -- I don't</p> <p>6 know if I indicated to you this morning -- we</p> <p>7 try to -- and most people, licensed</p> <p>8 professionals -- it's available to everybody,</p> <p>9 but specifically in nurses in my experience, we</p> <p>10 give them treatment in lieu of conviction, which</p> <p>11 means they plead guilty to the charge, but it's</p> <p>12 held in abeyance and they're put on a one-year</p> <p>13 probation; and if they complete the program,</p> <p>14 then their case is dismissed and the case is</p> <p>15 sealed and then they're able to be productive</p> <p>16 again, straighten them out. Because if we lay a</p> <p>17 felony on everybody, that doesn't do anybody any</p> <p>18 good. So we're trying to take a more -- how</p> <p>19 should I say -- learned view of things. At</p> <p>20 least from my perspective, that was it.</p> <p>21 Q. So it sounds like your office put</p> <p>22 more of an emphasis on addiction treatment</p> <p>23 versus prosecution than it had in prior years?</p> <p>24 A. I think that would be a fair</p> <p>25 statement.</p>
<p style="text-align: right;">Page 251</p> <p>1 at the pretrial stage, and that means that they</p> <p>2 did not need to be taken to trial; is that</p> <p>3 right?</p> <p>4 A. Seems about right.</p> <p>5 Q. Do you know what accounts for the</p> <p>6 substantial decrease in total crimes charged by</p> <p>7 your office between 2010 and 2014?</p> <p>8 A. Yes.</p> <p>9 Q. What is that?</p> <p>10 A. Some factors involved.</p> <p>11 Well, we started to take a more</p> <p>12 macro view of things, at least from the drug</p> <p>13 situation, and we got a drug court going on.</p> <p>14 We're trying to get more diversion type of low</p> <p>15 end felonies out.</p> <p>16 Also, there was a change in</p> <p>17 prosecutor, okay, and so a change in policy.</p> <p>18 And there was -- I know there was criticism of</p> <p>19 our office from when Mr. Mason was in office</p> <p>20 that he charged too many people with too many</p> <p>21 things. So I think the prosecutor coming in,</p> <p>22 Mr. McGinty, took a view to try not to indict</p> <p>23 everything that came in, and so there's other</p> <p>24 alternative resolutions that we did to try to</p> <p>25 alleviate taking everything to -- to indictment,</p>	<p style="text-align: right;">Page 253</p> <p>1 Q. And, in your opinion, this was a</p> <p>2 positive move?</p> <p>3 A. Yes, because the individual people</p> <p>4 are addicts. That's a disease. And I've seen</p> <p>5 it destroy families in our community. So let's</p> <p>6 try to get them straight and productive.</p> <p>7 Q. Do you know what treatment programs</p> <p>8 are available in prisons for prisoners with</p> <p>9 addiction issues?</p> <p>10 A. No, I don't. I would assume there</p> <p>11 are.</p> <p>12 Q. If you look again at the same</p> <p>13 exhibit, page 11, one page backwards from the</p> <p>14 same page we were on previously, on the left</p> <p>15 side in the middle there is a chart. It's</p> <p>16 called the office snapshot.</p> <p>17 A. Yes.</p> <p>18 Q. A pie chart?</p> <p>19 A. Right.</p> <p>20 Q. And it says that your 2014 operating</p> <p>21 budget was 31.2 million dollars?</p> <p>22 A. Holy mackerel.</p> <p>23 Q. Does that sound accurate to you?</p> <p>24 A. I just --</p> <p>25 Q. You don't know?</p>

<p style="text-align: right;">Page 254</p> <p>1 A. No. It's a lot of money. 2 Q. If you look at the pie chart, you 3 see that 62 percent of the budget was for 4 salaries and 22 percent was for benefits. 5 A. Um-hum. 6 Q. So combined, 84 percent of the 7 budget in 2014 was for salary and benefits, 8 correct? 9 A. Correct. 10 Q. And do you know at this time -- this 11 is the 2015 report -- do you know whether your 12 office had taken steps to hire anyone additional 13 to work on opioid-related matters? 14 A. I don't know. 15 Q. Do you know whether your office 16 incurred any additional expenses around this 17 time related to opioid abuse problems? 18 A. I would assume, because we started 19 having dead bodies and these problems turned 20 into a crisis, it accelerated, so I would assume 21 that it cost the county more money to -- you 22 know, the county coroner's office was being 23 flooded with dead bodies and other expenses like 24 that. 25 Q. But referring your attention</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. And we're going to look again at 2 that chart at the top left corner. 3 A. Salaries went down. 4 MR. SPELLACY: Where are we at? I'm 5 sorry. What page? 6 MS. WOODS: Page 6. 7 MR. SPELLACY: Okay. 8 Q. So the chart at the top left corner 9 indicates that 10,779 adult cases were completed 10 in 2015. 11 Do you see that? 12 A. Yes. 13 Q. Do you know how that compares to the 14 previous year? 15 A. I'd have to open up the piece -- I 16 mean the report and look at it. 17 Q. Okay. We're going to make it a 18 little easier for you. If you simply turn the 19 page to page 7 of that same exhibit -- 20 A. Okay. Got it. 21 Q. -- do you see in Section 1, the last 22 couple sentences in Section 1 there in italics 23 that begin with the words, "The impact of this 24 practice is significant"? Do you see that 25 section?</p>
<p style="text-align: right;">Page 255</p> <p>1 specifically to the prosecutor's office, do you 2 know if the prosecutor's office incurred 3 additional line item expenses because of the 4 opioid -- 5 A. I would have no knowledge of that, 6 whether it is true or not. 7 Q. Okay. These -- this public report 8 highlights some headline cases of your office. 9 Would it surprise you to learn that none of the 10 headline cases involved prescription opioids? 11 A. That doesn't mean anything. It 12 doesn't mean anything. That's the headline 13 cases that are here. I agree with you. None of 14 the cases listed on page 12 have to do with 15 opioid. 16 Q. Okay. Turning your attention to the 17 other exhibit -- that's Exhibit? 18 A. 11. 19 Q. 11. Thank you. Exhibit 11 is the 20 2016 report. 21 A. Um-hum. 22 Q. And if I could turn your attention 23 to page 6 of this report. It's a little bigger 24 than the last one. 25 A. All right.</p>	<p style="text-align: right;">Page 257</p> <p>1 A. Yes. 2 Q. And that states, "In 2015 the office 3 indicted 21 percent fewer defendants than in 4 2011." 5 A. Okay. 6 Q. "A reduction of nearly 3,000 cases 7 per year"?" 8 A. Okay. 9 Q. "And low level indictments are down 10 even more, 25 percent, since 2011." 11 Does that statement accord with your 12 experience? In other words, do you have any 13 reason to doubt that that is an accurate 14 statement? 15 A. No. 16 Q. And here again, just as in the prior 17 year, we see your office's caseload continue to 18 decrease over time, correct? 19 MR. SPELLACY: I object. It's not 20 true. 21 Q. Do you understand my question? 22 A. No. I'm sorry. 23 Q. So here again, just as in the prior 24 year, we see it noted that your office's number 25 of defendants are decreasing --</p>

<p style="text-align: right;">Page 258</p> <p>1 MR. SPELLACY: Objection.</p> <p>2 Q. -- over time?</p> <p>3 A. That's what these documents you put</p> <p>4 in front of me say.</p> <p>5 Q. And Section 2 of page 7 I think</p> <p>6 refers to what you were speaking about earlier.</p> <p>7 In that section there's a quote, a bold quote,</p> <p>8 that says, "We want to send dealers to prison</p> <p>9 and addicts to treatment."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And is that in alignment with what</p> <p>13 you understood your office's policy to be at</p> <p>14 this time when Prosecutor McGinty was in charge?</p> <p>15 A. I would, yes. Based upon our</p> <p>16 limited resources, yeah.</p> <p>17 - - - - -</p> <p>18 (Thereupon, Gutierrez Deposition</p> <p>19 Exhibit 12, Plaintiffs The County of</p> <p>20 Cuyahoga, Ohio and the State of Ohio</p> <p>21 Ex Rel. Prosecuting Attorney of</p> <p>22 Cuyahoga County, Michael C.</p> <p>23 O'Malley's Second Supplemental</p> <p>24 Responses and Objections to</p> <p>25 Distributor Defendants'</p>	<p style="text-align: right;">Page 260</p> <p>1 expansion and improvement of opioid-related law</p> <p>2 enforcement interventions?</p> <p>3 A. Could you repeat that question</p> <p>4 again? Do I know what they are?</p> <p>5 Q. Yes.</p> <p>6 A. I would have no knowledge of that,</p> <p>7 no.</p> <p>8 Q. Okay. If you turn now to page --</p> <p>9 the very end. It's the second to last page of</p> <p>10 the document. You'll see an Excel spreadsheet.</p> <p>11 Second to the last page.</p> <p>12 A. Okay.</p> <p>13 Q. The prosecutor is the third row from</p> <p>14 the top.</p> <p>15 A. Um-hum.</p> <p>16 Q. And it lists damages from year 2006</p> <p>17 to 2017.</p> <p>18 A. Okay.</p> <p>19 Q. Totaling 50 million dollars.</p> <p>20 A. Okay.</p> <p>21 Q. Do you know how these damage</p> <p>22 calculations were generated?</p> <p>23 A. No.</p> <p>24 Q. Have you seen this document before?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 259</p> <p>1 Interrogatory No. 18 Pursuant to the</p> <p>2 Court's November 21, 2018 Order, was</p> <p>3 marked for purposes of</p> <p>4 identification.)</p> <p>5 - - - - -</p> <p>6 Q. Handing you what's been marked as</p> <p>7 Exhibit 12, this is another response from the</p> <p>8 Plaintiffs to an interrogatory --</p> <p>9 A. Okay.</p> <p>10 Q. -- regarding damages.</p> <p>11 A. Okay.</p> <p>12 Q. Have you seen this document before?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Okay. Let's move to page 8. Sorry</p> <p>15 about that. Let's go to page 9. Okay. There</p> <p>16 are two categories here I want to draw your</p> <p>17 attention to in the center of page 9.</p> <p>18 The first is "Expansion and</p> <p>19 improvement of opioid-related law enforcement</p> <p>20 interventions," and the second category is</p> <p>21 "Expansion and improvement of opioid-related</p> <p>22 drug disposal programs."</p> <p>23 A. Okay.</p> <p>24 Q. Do you have any knowledge about what</p> <p>25 damages your office incurred related to the</p>	<p style="text-align: right;">Page 261</p> <p>1 Q. Do you have any basis from which to</p> <p>2 conclude that your office had 50 million dollars</p> <p>3 in damages as a result of opioid abuse?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. No. I can't answer that question.</p> <p>6 Q. Do you know what future costs your</p> <p>7 office expects to incur as a result of the</p> <p>8 opioid abuse?</p> <p>9 A. I can't answer that question.</p> <p>10 Q. Sitting here today, are you aware of</p> <p>11 any specifics regarding additional costs your</p> <p>12 office has incurred as a result of opioid abuse?</p> <p>13 A. All I can tell you is what I know in</p> <p>14 the last few years, how things have increased as</p> <p>15 far as the addiction problem in our county based</p> <p>16 upon prescription opioids. All I can tell you</p> <p>17 is the dead bodies we keep finding and all the</p> <p>18 prescription rings that keep popping up. It</p> <p>19 just seems things really accelerated in the last</p> <p>20 three or four years in our county regarding this</p> <p>21 specific issue. And I can't put a number on</p> <p>22 that.</p> <p>23 Q. Nor do you dispute that your county</p> <p>24 has experienced a substantial decline in number</p> <p>25 of cases?</p>

<p style="text-align: right;">Page 262</p> <p>1 A. Yes, because -- but for different 2 reasons than this. You're trying to separate 3 two things and make a conclusion out of them and 4 that's -- that's not what's happening here. 5 Q. Okay. But you certainly do agree 6 that your office had -- its caseload has 7 decreased substantially during this time? 8 A. Our caseload has decreased but the 9 opioid crisis has increased. 10 Q. Okay. You mentioned that your 11 office took on a renewed focus to get addicts 12 treatment. Are you familiar with a drug court 13 program? 14 A. I'm familiar with it, yes. I mean, 15 I know about it, yes. 16 Q. Do you know what the criteria are 17 for a defendant to be routed into the drug court 18 program? 19 A. No, I don't, actually. Just that he 20 has to have a drug problem and be assessed by 21 the psych clinic and be requested to be put in 22 that particular courtroom. Besides those 23 fundamental things, I don't know. 24 Q. To your understanding, it's 25 voluntary?</p>	<p style="text-align: right;">Page 264</p> <p>1 A. Because I want them to pay for what 2 they did. 3 Q. Because, in general, you prosecute 4 the more serious offenders? 5 A. Exactly. The people that are in 6 drug court are usually the addicts, i.e., the 7 patients too, not the dealers. 8 Q. Do you know which two judges preside 9 over the drug court? 10 A. Judge Matia. I know Judge Jackson 11 was the other one, but he retired. So I don't 12 know who the other drug court judge is. They 13 had to just appoint one in the last month, this 14 month actually. 15 Q. And you've never worked in the drug 16 court? 17 A. No. 18 Q. Do you know what portion of your 19 budget is allocated toward drug prosecutions? 20 A. I do not know that. 21 Q. Do you have any knowledge about why 22 your budget may have increased or decreased at 23 particular times? 24 A. No. 25 Q. Do you have any knowledge in how the</p>
<p style="text-align: right;">Page 263</p> <p>1 A. Yeah. 2 Q. What role does a prosecutor play in 3 drug court, if any? 4 A. We have a drug court prosecutor. 5 You'd have to ask him. All I know is that's to 6 try to get -- that's an alternative type of way 7 of dealing with this problem that we're having. 8 Q. Do you know if your office has 9 incurred any costs associated with drug court? 10 A. I don't know. I would just assume 11 they did. I don't know. 12 Q. Do you know roughly what percentage 13 of drug offenders participate in drug court 14 programs? 15 A. I don't have that, no, don't have 16 that figure. 17 Q. Do you know if there's a limit on 18 how many people can participate in a drug court 19 at a given time? 20 A. I don't know that answer either. 21 Q. Do you know how the drug court is 22 funded? 23 A. I don't know that either. See, I 24 don't want my defendants to go to drug court. 25 Q. Why not?</p>	<p style="text-align: right;">Page 265</p> <p>1 overall staffing numbers of your office has 2 changed in the last 15 years? 3 A. No. I can say generally, when the 4 economy is going well, people leave, and when 5 the economy is not going well, people stay. 6 Q. Do you have any basis for believing 7 that your office's spending has increased, 8 decreased or stayed the same over the last 15 9 years? 10 A. I don't have those numbers. 11 Q. Other than prosecutions, what 12 activities does your office engage in that 13 relate to opioid abuse and use, if any? 14 MR. SPELLACY: Objection. 15 A. I don't know what programs they have 16 or don't have. 17 Q. Your office participates in the drug 18 court? 19 A. Correct. 20 Q. And certainly in criminal 21 investigations and prosecutions, right? 22 A. Correct. 23 Q. Does your office also participate in 24 rehabilitation and addiction support services? 25 A. Does our office provide those</p>

<p>1 particular services? I don't think they do.</p> <p>2 Q. Do you know if your office engages</p> <p>3 in emergency response related to opioids?</p> <p>4 A. What do you mean by that? What's</p> <p>5 emergency response? I don't understand what</p> <p>6 that is.</p> <p>7 Q. Would your prosecutors ever be</p> <p>8 involved in or have they ever been involved in</p> <p>9 emergency response efforts related to opioids,</p> <p>10 such as going to the scene of an overdose, for</p> <p>11 example?</p> <p>12 A. I think as a matter of course our</p> <p>13 major trial division prosecutors go out to</p> <p>14 scenes of potential homicides.</p> <p>15 Q. Do you know whether any of those --</p> <p>16 A. That's potential homicides.</p> <p>17 Q. -- have involved opioids?</p> <p>18 A. Could be.</p> <p>19 Q. You just don't know one way or the</p> <p>20 other?</p> <p>21 A. Yeah. But I'm just saying your</p> <p>22 standard overdose, I don't think we go out on</p> <p>23 that.</p> <p>24 Q. Okay. Is your office involved in</p> <p>25 death investigations?</p>	<p>Page 266</p> <p>1 pharmacists or doctors, related to opioids?</p> <p>2 A. I have no knowledge.</p> <p>3 Q. What activities does your office</p> <p>4 engage in with respect to review of legislation</p> <p>5 and advocacy efforts?</p> <p>6 A. Regarding the opioid crisis?</p> <p>7 Q. Yes.</p> <p>8 A. I don't know about that. I'm sure</p> <p>9 they do. I don't know. I'm not involved in</p> <p>10 that whole type of activities.</p> <p>11 Q. Were you involved in efforts to</p> <p>12 change the law in the area of the admissibility</p> <p>13 of medical records?</p> <p>14 A. Yeah. That was me, and I did.</p> <p>15 Q. When was that?</p> <p>16 A. '99, 2000, when the law finally got</p> <p>17 passed.</p> <p>18 Q. And what did the law change?</p> <p>19 A. That permitted prosecutors in the</p> <p>20 State of Ohio to utilize medical records in the</p> <p>21 prosecution of practitioners, because before</p> <p>22 that -- how should I say -- creative defense</p> <p>23 counsels would make an argument to the court</p> <p>24 that we did not have the right to look at</p> <p>25 medical records.</p>
<p>1 A. Yes. We investigate homicides.</p> <p>2 Q. Good point.</p> <p>3 Does your office also engage in the</p> <p>4 collection and use of data related to the opioid</p> <p>5 abuse problems in the county?</p> <p>6 A. Not that I know of.</p> <p>7 Q. You mentioned earlier that you</p> <p>8 provided some training and that some of the</p> <p>9 participants were law enforcement?</p> <p>10 A. Correct.</p> <p>11 Q. Does your office also engage in</p> <p>12 other types of training for law enforcement</p> <p>13 related to opioids?</p> <p>14 A. Not that I know of. Not that I'm</p> <p>15 aware of.</p> <p>16 Q. Do you know of any other prosecutors</p> <p>17 in your office who have led training programs</p> <p>18 for law enforcement related to opioids?</p> <p>19 A. Not that I can remember.</p> <p>20 Q. What public education or outreach</p> <p>21 efforts does your office engage in related to</p> <p>22 opioids, if any?</p> <p>23 A. I don't know.</p> <p>24 Q. Does your office engage in any</p> <p>25 outreach to industries, like distributors,</p>	<p>Page 267</p> <p>Page 269</p> <p>1 Q. Under HIPAA?</p> <p>2 A. That was one of the arguments, yes.</p> <p>3 And that was taken care of. I mean, it took me</p> <p>4 about five years to get that statute passed.</p> <p>5 Q. Why was it important that you were</p> <p>6 able to use medical records?</p> <p>7 A. So I could prosecute practitioners</p> <p>8 without not having my vital piece of evidence,</p> <p>9 which was the medical record.</p> <p>10 Q. And you would consider those medical</p> <p>11 records vital --</p> <p>12 A. Essential.</p> <p>13 Q. -- to proving a case against the</p> <p>14 doctor?</p> <p>15 A. Yes. But we have to redact the</p> <p>16 personal information of the individuals, so you</p> <p>17 get a medical record up there with no</p> <p>18 identifying of individuals.</p> <p>19 Q. What specifically did you do to help</p> <p>20 push through that legislative reform?</p> <p>21 A. I worked with the medical board and</p> <p>22 the pharmacy board. I was about to go to</p> <p>23 Columbus and testify, but somebody else did for</p> <p>24 the pharmacy board.</p> <p>25 And I also had a case and I was --</p>

<p>Page 270</p> <p>1 I've been a special prosecutor in numerous 2 counties over the years, and I was a special 3 prosecutor in Logan County, and I prosecuted the 4 coroner down there for giving out amphetamines, 5 which I just was thinking -- I told you I didn't 6 do an amphetamine case from '89 to recently. 7 That was the one in the middle that I did, 8 Dr. McGriff, and that issue came up down there, 9 and the third district down there ruled for me 10 and then the legislature then followed suit 11 after that case.</p> <p>12 Q. How were you able to prosecute 13 Dr. Smirnoff and others in court before the law 14 was changed allowing the use of these medical 15 records?</p> <p>16 A. Because the judges ruled in my favor 17 on that one.</p> <p>18 Q. I see.</p> <p>19 A. That was an issue of first 20 impression, and some judges would rule -- most 21 of the judges could see the sense of that 22 because the doctor would get up and assert the 23 privilege and say I have the privilege of that 24 and --</p> <p>25 Q. Have you assisted in the passage of</p>	<p>Page 272</p> <p>1 Bill Number 110 titled "Naloxone Hit/Skip Drug 2 Overdose Immunity"?</p> <p>3 A. No. I don't know.</p> <p>4 Q. Are you familiar with that law?</p> <p>5 A. No.</p> <p>6 Q. Are you familiar with a law that 7 provides immunity from arrest or prosecution or 8 permits the court to consider drug treatment for 9 a minor drug possession in situations where a 10 person seeks medical assistance for themselves 11 or for someone else experiencing a drug 12 overdose?</p> <p>13 A. I'm not familiar with that law.</p> <p>14 Q. Are you familiar with any special 15 programs in your office relating to opioids?</p> <p>16 A. Just the treatment in lieu.</p> <p>17 Q. The what?</p> <p>18 A. The treatment in lieu statute that 19 we use.</p> <p>20 Q. Can you explain that in greater 21 detail?</p> <p>22 A. Yes.</p> <p>23 An individual who has committed a 24 crime based upon the fact that they are addicted 25 to drugs get an opportunity to straighten</p>
<p>Page 271</p> <p>1 any other legislation related to prosecution of 2 medical professionals or opioids?</p> <p>3 A. No.</p> <p>4 Q. To your knowledge, have any of the 5 other employees in your office participated in 6 the review of legislation or advocacy efforts?</p> <p>7 A. I don't have no knowledge of that.</p> <p>8 Q. Are you familiar with the Oriana 9 House?</p> <p>10 A. Oriana House.</p> <p>11 Q. Oriana House. Thank you.</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It's a halfway house.</p> <p>15 Q. Do you or does anyone in your office 16 have any work or activities related to its work?</p> <p>17 A. Not me --</p> <p>18 MR. SPELLACY: Objection.</p> <p>19 A. -- personally. I don't know if 20 anybody in my office does.</p> <p>21 Q. Are you familiar with the opiate 22 task force?</p> <p>23 A. No, I'm not. That's street drugs.</p> <p>24 Q. To your knowledge, was your office 25 involved in the passage of what was called House</p>	<p>Page 273</p> <p>1 themselves out. So they get evaluated by a 2 psychologist or psychiatric people to determine, 3 in fact, the person was addicted during the time 4 that they were committing the crime. If, in 5 fact, we agree to that, and the court -- well, 6 actually, it's the court's ultimate decision, 7 but the court weighs heavily on whether the 8 state agrees to that -- they plead guilty to the 9 charge, and as you know, being a prosecutor, a 10 guilty plea is not effectuated until there is a 11 guilty finding. So a judge holds a guilty 12 finding in abeyance for a year to two years 13 while that individual is put in a program and on 14 intensive probation, to straighten him or 15 herself out; and if that person then does, in 16 fact, successfully complete that, the charges 17 are dropped and the case is sealed and hopefully 18 they go on their merry way to be a productive 19 member of society. If they fail, then the 20 guilty plea is then enforced, they are found 21 guilty and are subject to the criminal 22 sanctions.</p> <p>23 Q. For how long has your office 24 embraced this treatment in lieu policy?</p> <p>25 A. Well, it's not a policy. It's a</p>

<p>1 statute that is utilized in the appropriate 2 context. And for as long as I've been a 3 prosecutor.</p> <p>4 Q. And who funds the expenses 5 associated with the psych evaluation?</p> <p>6 A. I believe that's the county is the 7 one that pays for that unit, for those doctors.</p> <p>8 Q. Does it come out of your office's 9 budget?</p> <p>10 A. I don't know if our office pays some 11 of that or if it's just completely funded by the 12 county. I don't know that.</p> <p>13 Q. Has your office designated any 14 prosecutors to work jointly with the U.S. 15 Attorney's Office on drug trafficking cases?</p> <p>16 A. Not to my knowledge, but I -- I know 17 we have cross-designated some of our people to 18 go over there on some cases and that could have 19 dealt with some street drugs.</p> <p>20 Q. Has your office participated in the 21 heroin summits convened by the U.S. Attorney's 22 Offices starting in 2013?</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 A. I don't know. Could be. Again, 25 that's not my purview.</p>	<p>Page 274</p> <p>1 A. High Intensity Drug Enforcement Area 2 or whatever.</p> <p>3 Q. Do you know if your office has 4 participated in the Ohio HIDTA?</p> <p>5 A. Yes. I'm sure we have. I've been 6 to their offices, yeah.</p> <p>7 Q. You've participated yourself?</p> <p>8 A. In seminars that they have, yes.</p> <p>9 Q. And these are training seminars?</p> <p>10 A. I guess you would call them training 11 seminars.</p> <p>12 Q. Approximately how much time have you 13 spent participating in Ohio HIDTA activities?</p> <p>14 A. Over the years, I can't -- now and 15 then go out there.</p> <p>16 Q. Is it a couple times a year?</p> <p>17 A. No. No. Maybe a couple times every 18 five years.</p> <p>19 Q. Okay. Do you know who funds that 20 effort?</p> <p>21 A. No idea.</p> <p>22 Q. Prior to this litigation did your 23 office ever communicate with the DEA concerning 24 a retailer improperly supplying prescription 25 opioids to your county's residents?</p>
<p>1 Q. Has your office been involved in the 2 U.S. Attorney's heroin and opiate task force 3 formed in 2013?</p> <p>4 MR. SPELLACY: Objection.</p> <p>5 A. I don't know about that either and, 6 again, usually when you're talking about task 7 forces, you're talking about street drugs, not 8 prescription drugs.</p> <p>9 Q. In the course of your 10 investigations, when you substantiate criminal 11 conduct by a doctor or a pharmacist, do you make 12 notifications to a third-party payer or a 13 pharmacy benefit manager?</p> <p>14 A. No.</p> <p>15 Q. Why not?</p> <p>16 A. Why should I? What's that got to do 17 with what I'm doing? I don't see why I 18 should -- a third-party payer, an insurance 19 company? Unless somehow insurance fraud is 20 involved, then they would be contacted as a 21 matter of course as being a victim.</p> <p>22 Q. Are you familiar with the term 23 "HIDTA"?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know what it means?</p>	<p>Page 275</p> <p>Page 277</p> <p>1 A. What do you mean by retailer?</p> <p>2 Q. A pharmacy, for example.</p> <p>3 A. That did what?</p> <p>4 Q. That improperly supplied 5 prescription opioids to your residents.</p> <p>6 A. Repeat that question again because 7 I'm getting tired.</p> <p>8 Q. Yeah. I'll rephrase it.</p> <p>9 Has your office communicated with 10 the DEA concerning bad acting pharmacies, such 11 as pill mills, for example?</p> <p>12 A. Okay. Over the years I have worked 13 with the DEA on pill mills, yes.</p> <p>14 Q. Over the years in your 15 investigations, when you have uncovered criminal 16 conduct by doctors or pharmacists --</p> <p>17 A. Um-hum.</p> <p>18 Q. -- do you routinely refer those 19 individuals or companies to the DEA?</p> <p>20 A. Usually not. If we -- if the state 21 locals develop that case, then it stays in the 22 state courts. I will call the DEA regarding the 23 administrative action on the registration 24 number.</p> <p>25 Q. Has the DEA ever shared with you or</p>

<p style="text-align: right;">Page 278</p> <p>1 your office any tips or advice on how to detect 2 potentially unlawful conduct related to 3 prescription opioids?</p> <p>4 A. That's a very broad question. I 5 don't know how to answer that. I've worked with 6 the DEA over the years. They tell me their 7 tips. I don't know. They do the investigation. 8 I do the prosecution. So I don't know how to 9 answer that question.</p> <p>10 Q. We'll break it down.</p> <p>11 Have you ever received any documents 12 or materials from the DEA providing you advice 13 on how to investigate and prosecute prescription 14 opioid cases?</p> <p>15 A. Not that I can recall.</p> <p>16 Q. And in your conversations with the 17 DEA, have any of the DEA employees ever 18 communicated to you advice or tips on how to 19 effectively investigate and prosecute 20 prescription drug crimes?</p> <p>21 A. It's usually the other way around.</p> <p>22 Q. Where --</p> <p>23 A. I'm telling them what to do.</p> <p>24 Q. And what sorts of things do you tell 25 the DEA?</p>	<p style="text-align: right;">Page 280</p> <p>1 A. Can I have a second? 2 Q. Do you want to take a break? 3 A. Just one second, talk to him for a 4 second.</p> <p>5 MS. WOODS: Let's take a break.</p> <p>6 THE VIDEOGRAPHER: Off the record, 7 3:47.</p> <p>8 (Recess had.)</p> <p>9 THE VIDEOGRAPHER: On the record, 10 3:49.</p> <p>11 BY MS. WOODS:</p> <p>12 Q. Okay. So would you like me to 13 repeat the question?</p> <p>14 A. Sure.</p> <p>15 Q. Why didn't you routinely request 16 ARCOS data from the DEA?</p> <p>17 A. Why I didn't routinely request ARCOS 18 data? Because, first of all, DEA doesn't give 19 that stuff out just willy nilly. That's the 20 first thing. Okay. And I did not think it was 21 relevant until just recently to get those 22 numbers because of the increase, as I keep 23 saying, of the dead bodies, and, it is my view, 24 the opioid crisis getting completely out of hand 25 in the last three or four years. And when I say</p>
<p style="text-align: right;">Page 279</p> <p>1 A. It's contextual depending on the 2 case. I mean, I'm the one that manages in court 3 these cases.</p> <p>4 Q. I cannot recall if you said you have 5 access to ARCOS or not.</p> <p>6 A. No, I don't.</p> <p>7 Q. You do not.</p> <p>8 Did you ever reach out to the DEA 9 and try to get access to ARCOS?</p> <p>10 A. Not access but numbers.</p> <p>11 Q. You stated earlier that you believed 12 you had a report that would tell you the total 13 number of opioids coming into your county over a 14 particular period of time, right?</p> <p>15 A. Yes.</p> <p>16 Q. Where might that report be?</p> <p>17 A. I don't know where I have that. I 18 got a sheet, a spreadsheet, with numbers on it, 19 and I don't know whether I got it from the 20 pharmacy board or the DEA. And that would have 21 been in the last two years. I don't know where 22 that is.</p> <p>23 Q. Is there a particular reason why you 24 didn't request the ARCOS data from the DEA 25 earlier?</p>	<p style="text-align: right;">Page 281</p> <p>1 "opioid crisis," I want to make sure I'm talking 2 about prescription drugs, okay, from my little 3 box that I work in.</p> <p>4 Q. So the first thing you said was that 5 the DEA doesn't just give it out.</p> <p>6 A. No. No, they don't.</p> <p>7 Q. What does the DEA require from you 8 in order for them to give you the ARCOS data 9 you're requesting?</p> <p>10 A. I don't know. And, again, when I 11 requested this information, I believe, about a 12 year and a half, two years ago, I can't remember 13 whether I got that information from -- if I got 14 ARCOS from the DEA or I got it from the pharmacy 15 board and their tracking of prescriptions being 16 filled in Cuyahoga County for certain years.</p> <p>17 Q. Okay. But in your experience, even 18 as a law enforcement professional, it is 19 challenging to get your hands on the ARCOS data; 20 is that a fair characterization of your 21 testimony?</p> <p>22 A. I don't know. I don't know if -- I 23 wouldn't characterize it like that. All I know 24 is maybe in the right circumstances that I would 25 be able to get that information from the DEA if</p>

<p>1 I needed it, if we were on a joint investigation 2 on something and it was appropriate and 3 relevant. So I don't know about challenging, 4 but just to say, Hey, can I have these numbers, 5 I think, yeah, that would be challenging. 6 Q. Okay. Have you attempted to get 7 ARCOS data from the DEA and had your request 8 denied? 9 A. See, I can't remember whether I got 10 it from the DEA or the pharmacy board. I'm 11 sorry. I don't remember -- 12 Q. So you don't recall? 13 A. -- whether I got it from one of 14 those two. 15 Q. Have you ever tried to proactively 16 use either ARCOS data or OARRS data to determine 17 if there were pockets within your jurisdiction 18 who were getting a disproportionate number of 19 prescription opioids? 20 A. The short answer to that question is 21 no. 22 Q. Why not? 23 A. Because we don't need to look for 24 work. Work will come to us, okay. We are 25 overwhelmed at our office all the time. I feel</p>	<p>Page 282</p> <p>1 Q. And what is your general 2 understanding? 3 A. Are you talking about a pain 4 management situation? Is that what you're 5 talking about? 6 Q. The guidelines for management of 7 chronic pain that were issued. 8 MR. SPELLACY: Objection. 9 A. Generally speaking, there's 10 certain -- how should I say -- regulations 11 before you can even open up a pain management 12 clinic. Okay. I don't know if that was the law 13 that changed that you had to be a doctor to 14 actually open one. It used to be that people 15 would open them and get some shady doctors and 16 just start writing prescriptions. Especially in 17 southern Ohio that was a big, big issue. 18 Q. When was that occurring, over what 19 time period approximately? 20 A. Last five, six years that we've had 21 those issues, but generally speaking, there has 22 to be a certain -- pain management is a 23 multi-disciplinary approach. You have to do 24 certain things before you put patients on 25 long-term narcotic therapy, okay. There is a</p>
<p>1 like I'm putting my finger in a dike. That's 2 all I feel I'm doing in the last 30 years, 3 especially in the last four years. 4 Q. What do you have to do to receive 5 the OARRS data? Do you have to go through the 6 board? 7 A. No. We actually have -- there's a 8 certain certification that the pharmacy board 9 gives to law enforcement agencies to be able to 10 access that data, and we do have an OARRS 11 officer within our office, but to be honest with 12 you, I've never used that, because when I work 13 with the pharmacy board, they just have that 14 stuff, so I don't have to request it. But we do 15 have an OARRS officer, I believe, in our office. 16 Q. Okay. Are you familiar with the 17 opioid prescribing guidelines that were issued 18 in 2011 by the governor's cabinet opiate action 19 team? 20 A. No. 21 Q. Are you familiar with the 22 prescribing guidelines for management of chronic 23 pain that were issued in 2013? 24 A. Not that specific document, but 25 generally I do.</p>	<p>Page 283</p> <p>1 very small subset in the United States that, 2 based upon my -- my experience, that there is an 3 appropriate situation where people are on 4 long-term narcotic therapy, but that subset of 5 people is very, very, very low, and so you 6 have to go through all these procedures and -- I 7 mean protocols before I'm going to put you on 8 Vicodin for the rest of your life. 9 Q. And is that according to these 10 guidelines that were issued by the governor's 11 cabinet? 12 A. I don't know. All I know is this is 13 what evolved and developed since the middle '90s 14 regarding pain management in the State of Ohio. 15 The medical board puts out these -- what do they 16 call them -- these guidelines, these papers, 17 this is what you need to do. They're not 18 statutes, but they're recommendations that this 19 is what you need to do, and they've tightened 20 that up regarding pain management over the 21 years. So I don't know specifically that, but I 22 know the evolution of what's going on with pain 23 management. 24 Q. Okay. So over the years these 25 guidelines, these best practices, if you will,</p>

<p style="text-align: right;">Page 286</p> <p>1 have evolved to become more strict and more 2 careful -- 3 A. I would agree with that. 4 Q. -- regarding prescription opioids? 5 A. I would agree with that. 6 Q. Are you familiar with the 7 prescribing guidelines for outpatient management 8 of acute pain that were issued in 2016? 9 MR. SPELLACY: Objection. 10 A. No. 11 Q. Do you know what role, if any, your 12 office played in creating these guidelines? 13 A. I would have no knowledge of that. 14 Q. Based on what you know about the 15 evolution over time, in your opinion, would the 16 opioid abuse problem have been lessened in some 17 respect had those guidelines been more strict 18 sooner? 19 A. That's -- I'm not going to speculate 20 on that. I can't answer that question. I can't 21 answer that question because clearly if they 22 would have had any effect, we wouldn't be where 23 we're sitting here right now. 24 Q. Do you think since they've been 25 issued, they've had a positive or a negative or</p>	<p style="text-align: right;">Page 288</p> <p>1 Q. As someone in law enforcement, do 2 you agree with the decision to issue guidelines 3 related to opioid prescriptions? 4 MR. SPELLACY: Objection. 5 A. Well, I don't know the guidelines, 6 but I would assume that -- that they would be 7 something that would help our community. 8 Q. Do you think it's a wise idea to 9 encourage doctors to access OARRS to obtain data 10 about a patient's other prescriptions? 11 A. Absolutely. 12 Q. And in the training programs in 13 which you've presented, have you encouraged 14 colleagues and others to use OARRS as a helpful 15 tool in their prosecutions? 16 A. Well, when I was doing all the -- I 17 haven't talked in a seminar about this for a 18 long time, at least ten years, so when I talked, 19 OARRS wasn't even available. 20 Q. I see. 21 A. But if I did talk, I would tell them 22 that. 23 Q. Do you wish that OARRS had been 24 available sooner? 25 A. Absolutely.</p>
<p style="text-align: right;">Page 287</p> <p>1 no effect? 2 A. Again, as I explained before, what I 3 see going on is that the availability of these 4 prescription opioids have been taken back by 5 legislation and practices, and what has happened 6 is people who get addicted to OxyContin, 7 Percocet, then go to heroin, and that is why we 8 have the dead bodies right now. 9 Q. But in response to my question, do 10 you believe these guidelines have had a positive 11 impact, a negative impact or no impact on the 12 opioid abuse? 13 MR. SPELLACY: Objection. 14 A. Well, first of all, that wasn't the 15 question you first asked me, but I don't know. 16 Q. The question was, do you think since 17 they've been issued they've had a positive or a 18 negative or no effect -- 19 MR. SPELLACY: Objection. 20 Q. -- and your answer is you don't 21 know? 22 A. My answer is I can't speculate on 23 something like that. And my other answer was if 24 they did have such a positive effect, we 25 wouldn't be here right now.</p>	<p style="text-align: right;">Page 289</p> <p>1 Q. Why? 2 A. It's a great investigative tool. 3 Just to give you an example, if we 4 would prosecute a doctor, for example, we would 5 have to gather 30 or 40 agents of the pharmacy 6 board and spread out through Cuyahoga County in 7 a few days and grab all the prescriptions 8 literally from the pharmacies, and we would just 9 go to every pharmacy and see if they had -- if 10 prescriptions of that doctor was in there. Now 11 we know that we don't have to do that. 12 Q. Just by looking at the database? 13 A. Exactly. We didn't have a database 14 before, so we had to go out and actually grab 15 them physically, and it was a very arduous 16 process. 17 Q. Okay. The OARRS database is also 18 sensitive because it contains private medical 19 information about individuals, right? 20 A. The only OARRS that I've ever seen 21 has been a drug, basically, profile of 22 individuals and doctors. 23 Q. So it does contain medical 24 information about patients, right? 25 A. Well, in the State of Ohio a</p>

<p>1 prescription is not -- is not confidential 2 because the pharmacy board has the 3 administrative powers to go in at any point in 4 time at any pharmacy and look at the 5 prescription.</p> <p>6 Q. The pharmacy board does, but other 7 actors, like my client, cannot gain access?</p> <p>8 A. Of course, because you're not law 9 enforcement, but, I mean, HIPAA does bar that 10 stuff in certain situations, so the fact that 11 you got a prescription for a certain drug on a 12 certain date, I guess that could be debatable 13 whether that's under HIPAA or not. I could 14 guess it would be contextual.</p> <p>15 Q. But certainly prosecutors, police 16 and doctors all have access to OARRS data?</p> <p>17 A. To OARRS, yes.</p> <p>18 Q. OARRS. Excuse me.</p> <p>19 A. It's okay. You're getting ARCOS and 20 OARRS all mixed up. That's okay. You're 21 getting tired, too.</p> <p>22 Q. Are you aware that the Ohio governor 23 in 2015 announced a project to integrate OARRS 24 directly into electronic medical records and 25 pharmacy dispensing systems across the state?</p>	Page 290	<p>1 resources and we're completely overwhelmed by 2 this.</p> <p>3 Q. If additional resources were 4 available, what would you like to see your 5 office do with additional funding to combat the 6 opioid abuse problem?</p> <p>7 A. If I had a wish list, hire 8 investigators and we'd do our own investigation 9 of these type of cases besides the pharmacy 10 board and local law enforcement, because they're 11 overwhelmed with everything that they do.</p> <p>12 Q. So you would want your office to 13 hire its own investigators?</p> <p>14 A. Investigators and have a whole 15 diversion unit to combat this.</p> <p>16 Q. Is there a blueprint for how that is 17 done? Has that ever been done in your office 18 before?</p> <p>19 A. No. But to give you an example, the 20 Cuyahoga County Sheriff's Department used to 21 have a diversion unit. Now they don't. So it's 22 funding the entities and their priorities.</p> <p>23 Q. Anything else that you would like to 24 see your office do?</p> <p>25 A. I mean, that's a loaded question. I</p>	Page 292
<p>1 A. No.</p> <p>2 Q. In your opinion, would that be 3 helpful?</p> <p>4 A. He wants to do what now?</p> <p>5 Q. Integrate OARRS directly into the 6 electronic medical records and pharmacy 7 dispensing systems throughout the state.</p> <p>8 A. I don't know what that means. I 9 have no idea what that means.</p> <p>10 Q. So we've talked a little bit about 11 what governors have done or what the legislature 12 has done, what the prosecutors have done. In 13 some circumstances do you think that government 14 bureaucracy has stymied the county's ability to 15 combat its opioid abuse problem?</p> <p>16 MR. SPELLACY: Objection.</p> <p>17 A. I don't know. I don't know.</p> <p>18 Q. Based on your experiences, have you 19 identified any weaknesses in law enforcement's 20 response to the opioid abuse problem?</p> <p>21 A. Have I identified any weaknesses in 22 law enforcement's response to the opioid crisis?</p> <p>23 Q. Yes.</p> <p>24 A. I think the fact that the system is 25 overwhelmed by it because we only have limited</p>	Page 291	<p>1 would have to think about it. I'm sure there 2 would be things, but right now talking to you, I 3 can only speculate. Maybe doing some talks to 4 the doctors around town, you know, get out to 5 the pharmacists, try to have these medical 6 professionals understand the problem, what to 7 look for, how to combat it, how to integrate 8 that interface with us, with the prosecutor's 9 office, law enforcement, things of that nature, 10 yes.</p> <p>11 Q. What obstacles or frustration -- I'm 12 sure there are some -- have you encountered in 13 prosecuting prescription drug crimes?</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 Q. I mean, one example we talked about 16 was the inability to reliably use those medical 17 records in court, and that one was handled with 18 new legislation.</p> <p>19 A. Right.</p> <p>20 Q. Have there been other examples of 21 challenges or obstacles that you faced in your 22 prosecutions?</p> <p>23 A. Like I said, it's a matter of 24 resources. We are so overwhelmed with other 25 things, what's going on here, that I don't think</p>	Page 293

<p>1 we have enough resources to be able to 2 effectively deal with this problem. 3 Q. And just speaking from your own kind 4 of personal caseload -- we looked at your 5 office's caseload trajectory, but when you just 6 look at what you're working on, I believe you 7 stated that 10 to 20 percent of your caseload 8 relates to prescription opioids, correct? 9 A. Yes. And it ebbs and flows. 10 Q. How has that changed over the last 11 ten years? 12 A. It hasn't. It's been consistent. 13 Like I said -- 14 Q. Excuse me. What about over the last 15 20 years? 16 A. Over the last ten years, like I told 17 you, there's been an increase of scrip rings, 18 and, like I said, I keep going back to the last 19 four or five years how things have just exploded 20 as far as the opioid -- and when I say opioid 21 crisis, I'm talking about prescriptions. It 22 just seems like -- it appears to be out there 23 that there is just a lot of people trying to get 24 prescriptions, trying to get the medication, and 25 because doctors are now starting to clean up</p>	<p>Page 294</p> <p>1 what we had to work for -- with, yes, the best 2 we possibly could. 3 Q. Are there things today that you know 4 about combating prescription drug crime that you 5 wish you had known about ten years ago? 6 MR. SPELLACY: Objection. 7 A. You always think you're going to be 8 wiser, but the question is I wish I would have 9 done what again? 10 Q. Just if you've learned some lessons 11 and today you sit here knowing some things about 12 prescription drug crime prosecution that you 13 wish you had known ten years ago. 14 MR. SPELLACY: Objection. 15 A. To the extent what you guys did, I 16 never really realized the marketing and the 17 plans that the distributors and manufacturers of 18 these drugs and what they did starting with in 19 the late '90s with OxyContin and just went pedal 20 to the metal. That -- I was taken aback when I 21 really started to learn about really what was 22 going on and why the questions in my mind, why 23 all the time that there were so many drugs 24 available to these doctors. I could never 25 understand who was tracking the drugs, who was</p>
<p>1 their act a little bit, that's why I think we 2 have more scrip rings going on out there. But I 3 can tell you this, all of us, the police, the 4 prosecutor's office, everybody, has done the 5 best they possibly could under the circumstances 6 with what has been given to us to work with. 7 I mean, I, for example, have done 80 8 percent of the doctor cases in our office in the 9 last 30 years. I've trained a few people, but 10 they have left. So, I mean, I shouldn't be the 11 one doing all this all the time. There should 12 be other individuals. 13 Q. So putting aside what law 14 enforcement and prosecutors have done, have 15 there been other government officials, like 16 elected representatives in Ohio, that, in your 17 opinion, did not attack the opioid abuse problem 18 as quickly and as effectively as they should 19 have? 20 A. I can't think of any. 21 MR. SPELLACY: Objection. 22 Q. Do you think your own office 23 attacked the problem as quickly and intensely as 24 it should have? 25 A. Absolutely. With what we had and</p>	<p>Page 295</p> <p>Page 297</p> <p>1 -- who was counting all the pills. And you guys 2 are the ones who had all that information. You 3 knew where you were sending drugs, how much you 4 were sending the drugs to everybody. I didn't. 5 You did. 6 Q. Let's -- 7 MR. SPELLACY: You got to stop 8 interrupting the witness. Every time you don't 9 like an answer, you interrupt him. Stop. 10 Q. What is the source of statements you 11 made? What are you relying on? You mentioned a 12 60 Minutes episode. 13 A. Yes. And then the seminar that I 14 went to and things I started reading about 15 really what was going on. I mean, I'm blown 16 away that -- how you guys marketed these 17 dangerous drugs and told everybody that they 18 were fine when they weren't. 19 Q. Are you aware that McKesson does not 20 market -- 21 A. I don't know what McKesson does. 22 All I know is McKesson is a very powerful 23 corporation that has a lot of political clout 24 that screwed the DEA. Look, you guys all 25 represent to me -- to me you guys all</p>

<p style="text-align: right;">Page 298</p> <p>1 represent -- you guys are the evil empire, okay. 2 You've destroyed our community out there. You 3 may not think so, but you did. 4 Q. We've talked a lot today about 5 doctors who have illegally prescribed medicine 6 to people that did not need it, and as a result, 7 real people died because of this doctor. 8 A. Absolutely. 9 Q. We've talked about a number of cases 10 in which these doctors broke the law and it 11 resulted in death and harm to Cuyahoga County. 12 A. Correct. 13 Q. Despite the fact that we have talked 14 about a number of different cases involving 15 different doctors -- 16 A. Correct. 17 Q. -- would it surprise you to learn 18 that Cuyahoga County only produced 12 documents 19 from your custodial file? 20 A. What do you mean? What custodial 21 file? What is that? 22 Q. So that would be all the documents, 23 electronic and hard copy, in your possession 24 that relate to this litigation. Does that 25 number sound accurate to you?</p>	<p style="text-align: right;">Page 300</p> <p>1 prosecutions? 2 A. No. I didn't put anything 3 confidential in my e-mail. 4 Q. I wasn't asking about anything 5 confidential. I asked -- and I'll repeat my 6 question. During the years did you send e-mails 7 regarding drug investigations or prosecutions? 8 MR. SPELLACY: Objection. 9 A. I don't know. I don't know. 10 Q. Sitting here today, you cannot 11 recall if you have ever sent an e-mail regarding 12 a drug investigation or prosecution? 13 A. Of course. Of course I -- I have an 14 individual -- my investigator wants to meet. 15 We'll, yeah, e-mail each other where we're going 16 to meet. 17 Q. So you have sent such e-mails? 18 A. Yeah, but nothing substantive about 19 the case, something maybe procedural. 20 Q. You have never sent a substantive 21 e-mail regarding a drug investigation or 22 prosecution? 23 A. No; not what I would consider 24 substantive by talking about the facts and 25 circumstances of a case in detail, no.</p>
<p style="text-align: right;">Page 299</p> <p>1 MR. SPELLACY: Objection. 2 A. I don't know what you mean by 3 custodial file, if you mean my e-mails, if you 4 mean my case files. 5 Q. Yes, all of it. 6 A. My case files are my case files. 7 They're there. And I'm not an e-mail guy, so 8 you wouldn't find very many e-mails. 9 Q. Do you use e-mail in your job? 10 A. Yes. 11 Q. How long have you used e-mail? 12 A. Ever since it came out. 13 Q. About how many e-mails a day do you 14 send? 15 MR. SPELLACY: Objection. 16 A. Do I send? 17 Q. Yes. 18 A. I would probably say two or three a 19 week. 20 Q. And about how many e-mails do you 21 receive a week? 22 A. I receive a lot more. I don't know. 23 A week? 20. I don't know. 24 Q. During the years have you sent 25 e-mails about your drug investigations and</p>	<p style="text-align: right;">Page 301</p> <p>1 Q. But you have sent e-mails about the 2 drug investigations -- 3 A. Yes. 4 Q. -- and prosecutions? 5 A. Yes. 6 Q. How frequently do you delete your 7 e-mails? 8 A. I've never deleted my e-mails. 9 Q. What is the oldest e-mail you still 10 have access to? 11 A. I have no idea. You can look at my 12 inbox now. It's got like 1200 e-mails. I never 13 -- I never delete anything. 14 Q. Would it surprise you to find out 15 that the earliest e-mail we were provided is 16 dated March 21st, 2013? 17 MR. SPELLACY: Objection. 18 A. I don't know what was produced to 19 you. All I know is they were supposed to give 20 you all my e-mails. I said, "Go ahead." So I 21 don't know. 22 Q. You did use e-mail prior to March 23 21st of 2013, correct? 24 A. If e-mail was available prior to 25 March 13th of 2013, yes, I would have used</p>

<p style="text-align: right;">Page 302</p> <p>1 e-mails.</p> <p>2 Q. Was e-mail available in your office?</p> <p>3 A. I assume it was. I don't know. How</p> <p>4 long have we had e-mails? When did we get the</p> <p>5 internet? The late '90s, early 2000s. I would</p> <p>6 assume.</p> <p>7 Q. You've used your work e-mail</p> <p>8 throughout --</p> <p>9 A. The time that --</p> <p>10 Q. -- the last 15 or 20 years?</p> <p>11 A. Whenever it was available.</p> <p>12 Q. Okay. And am I correct that you</p> <p>13 sent and received e-mails regarding opioids and</p> <p>14 prescription opioids?</p> <p>15 MR. SPELLACY: Objection.</p> <p>16 A. Again, you're asking me very general</p> <p>17 questions. Get specific.</p> <p>18 Q. I'm intending for them to be</p> <p>19 general.</p> <p>20 A. Well, I can't answer the general</p> <p>21 questions. All I can tell you is as a matter of</p> <p>22 course I use my e-mails. Do I talk about</p> <p>23 specifics of a case in my e-mails? No. If</p> <p>24 somebody wants to meet on a case? Yes. Could</p> <p>25 there be a mention of we're going to talk about</p>	<p style="text-align: right;">Page 304</p> <p>1 seminars you've attended?</p> <p>2 A. I'm sure I have.</p> <p>3 Q. Did you delete those e-mails?</p> <p>4 A. I haven't deleted a thing.</p> <p>5 Q. Do you use any e-mail addresses</p> <p>6 other than your official e-mail account from the</p> <p>7 Cuyahoga County -- Cuyahoga County Prosecutor's</p> <p>8 Office?</p> <p>9 A. For my professional business, no.</p> <p>10 That's the only e-mail I use for county</p> <p>11 business.</p> <p>12 Q. Do you have a personal e-mail</p> <p>13 address as well?</p> <p>14 A. Yes, I do.</p> <p>15 Q. You've never used that for business?</p> <p>16 A. I don't believe I have. Could I</p> <p>17 have been once maybe -- no, I don't think so. I</p> <p>18 don't think so.</p> <p>19 Q. Are there other electronic</p> <p>20 notifications, reports or other documents you</p> <p>21 receive from others related to opioids?</p> <p>22 MR. SPELLACY: Objection.</p> <p>23 A. Like I said, in my normal course of</p> <p>24 my business, e-mails I receive from pharmacy</p> <p>25 board agents, local law enforcement about these</p>
<p style="text-align: right;">Page 303</p> <p>1 Dr. Joe and his patient? Yes, something like</p> <p>2 that. But I can't remember. And if it's there,</p> <p>3 it's there; if it isn't, it isn't.</p> <p>4 Q. Do you still have the e-mails that</p> <p>5 you've written and received over the years?</p> <p>6 A. No. Do you? Do you have e-mails</p> <p>7 back from 2010?</p> <p>8 Q. I'm not here today to answer your</p> <p>9 questions.</p> <p>10 A. That's what I'm saying. It's a</p> <p>11 silly question, okay. Whatever e-mails are on</p> <p>12 my e-mail, that's what it is.</p> <p>13 Q. And what e-mails have you preserved?</p> <p>14 A. I haven't preserved any.</p> <p>15 Q. You've stated you do not delete your</p> <p>16 e-mails.</p> <p>17 A. I don't delete my e-mails, so --</p> <p>18 Q. If you wanted to find an e-mail from</p> <p>19 2010, how would you do that?</p> <p>20 A. I couldn't. I don't know how.</p> <p>21 Q. What about e-mails from 2015? How</p> <p>22 would you find those e-mails?</p> <p>23 A. I don't know.</p> <p>24 Q. What about the seminars you've</p> <p>25 attended? Did you receive any e-mails about the</p>	<p style="text-align: right;">Page 305</p> <p>1 cases, that's all I do. That's all I receive.</p> <p>2 Q. Have you ever maintained a notebook</p> <p>3 or diary with notes of your work activities?</p> <p>4 A. No.</p> <p>5 Q. Do you have a cell phone for work?</p> <p>6 A. No. I use my personal cell phone</p> <p>7 for work.</p> <p>8 Q. Do you receive or send texts on your</p> <p>9 personal cell that relate to your work?</p> <p>10 A. No. Talk on the phone about it.</p> <p>11 Q. Did you or anybody else collect your</p> <p>12 computer to search for documents related to this</p> <p>13 litigation?</p> <p>14 MR. SPELLACY: Objection.</p> <p>15 A. All I know is my IT guy says they</p> <p>16 were going to get all my e-mails and give them</p> <p>17 to you. I said, "Go ahead."</p> <p>18 Q. Do you currently have in possession</p> <p>19 more than 13?</p> <p>20 A. E-mails?</p> <p>21 Q. E-mails.</p> <p>22 A. On my computer right now?</p> <p>23 Q. Yes.</p> <p>24 A. I am sure. I assume -- and I was</p> <p>25 going to say this but you cut me off, is that at</p>

<p style="text-align: right;">Page 306</p> <p>1 a certain point in time e-mails just drop off, 2 that the system itself just drops it off. 3 Q. Do you maintain hard copies of 4 documents in your office? 5 A. Yes. On my case files, yeah. 6 Q. Where do you keep them? 7 A. In my file cabinet. 8 Q. And did you or anybody collect those 9 hard copy documents to review them for this 10 litigation? 11 MR. SPELLACY: Objection. 12 A. Last week Mr. Gallucci asked me if I 13 had any hard copies, and I told him I had my 14 seminar papers and things of that nature, and 15 that's what I gave to him and he was supposed to 16 give them to you guys. 17 Q. Does your office have document 18 retention policies? 19 A. I'm sure they do, but I'm not aware 20 of them. When a file is done, I give the file 21 to the file room and they supposedly scan the 22 files on the computer and then they discard the 23 hard copies. That's my understanding of how we 24 keep files. 25 Q. For how long does your office</p>	<p style="text-align: right;">Page 308</p> <p>1 given to you. 2 Q. Were you involved in any way in 3 determining which case files to produce? 4 MR. SPELLACY: Objection. 5 A. I want to answer something regarding 6 my e-mails. I have deleted e-mails before, but 7 not very many. I'll get an e-mail, for example, 8 from an individual -- I used to coach 9 baseball -- about baseball tournaments. I'll 10 delete that, things of that nature. So I just 11 want to make sure we're all clear on that one. 12 MR. SPELLACY: Take a break while 13 you're looking through -- 14 MS. WOODS: Yes, let's take a break. 15 THE VIDEOGRAPHER: Off the record at 16 4:19. 17 (Recess had.) 18 THE VIDEOGRAPHER: On the record, 19 4:30. 20 A. I'd like to say something about this 21 hold and stuff, okay, to clarify things. 22 Q. There's no question pending. 23 A. I don't care if there's a question 24 pending. I want to make sure the record is 25 clear on my answers on this.</p>
<p style="text-align: right;">Page 307</p> <p>1 archive e-mails? 2 A. I don't know. 3 Q. Did you receive a hold notice when 4 this litigation was initiated, telling you and 5 your staff not to delete any records that might 6 have relevant information? 7 A. I was told not to delete any e-mails 8 that might have something to do with this case. 9 Q. When did you receive that notice? 10 A. I'm not sure who told me that, 11 whether it was Pete Sagetti or Dave Lambert. 12 Q. When did you receive that notice? 13 MR. SPELLACY: Objection. 14 A. I don't know. When I first found 15 out you guys wanted to depose me. When was 16 that, August? 17 Q. August of 2018? 18 A. Yes. 19 Q. Have you deleted or destroyed any 20 documents or materials related to opioids? 21 A. No. 22 Q. Are you aware that certain case 23 files from your office have been produced in 24 this litigation? 25 A. I was told that a hundred cases were</p>	<p style="text-align: right;">Page 309</p> <p>1 Q. So you need to correct your prior 2 answer regarding the document hold? 3 A. You want to say correct or explain 4 or whatever. The only thing I can tell you is 5 that in my memory -- we're talking about two 6 things, when I was informed I was going to be a 7 witness and when I was informed about some -- I 8 never was told about some litigation hold or 9 whatever. All I was told was that you guys are 10 entitled to all my e-mails, and I said, "Fine." 11 My understanding is that I got -- that I 12 remember in my head that sometime in August that 13 I was going to be deposed. Now, you have to 14 understand, I actually technically retired for 15 two months in July and August of this year and 16 then got rehired, so I can't remember whether I 17 was told before I had my two months hiatus, but 18 I know that in August my deposition -- in my 19 mind it's two different things. So this 20 litigation hold with e-mails, I can't even tell 21 you if somebody told me that. All that was told 22 to me was that all of my e-mails were going to 23 be mined for anything to do with opiate. I 24 said, "Be my guest. Take them all. I have 25 nothing to hide."</p>

<p style="text-align: right;">Page 310</p> <p>1 Q. To your knowledge, have you deleted 2 any e-mails or documents related to opioids in 3 the last two years?</p> <p>4 A. No.</p> <p>5 - - - - -</p> <p>6 (Thereupon, Gutierrez Deposition 7 Exhibit 13, Kenneth V. Mills 8 Indictment, was marked for purposes 9 of identification.)</p> <p>10 - - - - -</p> <p>11 Q. I want to hand you what has been 12 marked as Exhibit 13.</p> <p>13 And sorry. Was that a sufficient 14 opportunity to explain your prior testimony?</p> <p>15 A. Yes. I just wanted to make sure 16 that you understood that to me there were two 17 things going on and I was mentioning them 18 together.</p> <p>19 Q. Are you familiar with the 20 prosecution of Ken Mills, the former director of 21 corrections for Cuyahoga County?</p> <p>22 A. Yes, I am.</p> <p>23 MR. SPELLACY: Object to this line 24 of questioning.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">Page 312</p> <p>1 A. I can't tell you about an ongoing 2 criminal investigation. I can't tell you facts 3 and circumstances that are the basis of these 4 indictments.</p> <p>5 - - - - -</p> <p>6 (Thereupon, Gutierrez Deposition 7 Exhibit 14, News Article Entitled 8 "Former Cuyahoga County Jail 9 Director, Indicted In Corruption 10 Probe, Received \$16,700 Payout When 11 He Resigned," was marked for 12 purposes of identification.)</p> <p>13 - - - - -</p> <p>14 Q. Turning your attention to Exhibit 15 14 --</p> <p>16 A. Did you give it to me?</p> <p>17 Q. -- it is a news article dated 18 January 25th, 2019 --</p> <p>19 A. Yes.</p> <p>20 Q. -- entitled "Former Cuyahoga County 21 Jail Director Indicted in Corruption Probe 22 received \$16,700 payout when he resigned."</p> <p>23 A. Yes.</p> <p>24 Q. Have you read this particular news 25 article about the Mills case?</p>
<p style="text-align: right;">Page 311</p> <p>1 Q. And is he being prosecuted by your 2 office?</p> <p>3 A. Yes, he is.</p> <p>4 Q. What has Mr. Mills been charged 5 with, according to Exhibit 13?</p> <p>6 A. Basically he's charged with lying to 7 county council and lying to us and the FBI.</p> <p>8 Q. And specifically in Exhibit 13, 9 charges -- looks like counts 18 through 25 are 10 charges against Mr. Mills, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Are you personally involved in the 13 prosecution of Mr. Mills?</p> <p>14 A. Yes.</p> <p>15 Q. Do the charges against Mr. Mills 16 relate in any way to the issues raised in this 17 lawsuit?</p> <p>18 A. I don't know because I don't know 19 all the issues in this lawsuit.</p> <p>20 Q. Are you aware that Mr. Mills had no 21 prior experience running or working in jails?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any knowledge as to how 24 he got the job?</p> <p>25 MR. SPELLACY: Objection.</p>	<p style="text-align: right;">Page 313</p> <p>1 A. Yes, I did.</p> <p>2 Q. And according to this article, 3 Mr. Mills allegedly lied about his role in 4 blocking the hiring of necessary nursing staff 5 for jail facilities.</p> <p>6 MR. SPELLACY: Objection.</p> <p>7 A. Yes. That's in the article or was 8 in articles. I don't know if it's in this one.</p> <p>9 Q. Is it fair to say that failing to 10 have adequate medical staffing at a jail could 11 harm the inmate's health and well-being?</p> <p>12 MR. SPELLACY: Objection.</p> <p>13 A. I think that's kind of common 14 sensical, yes.</p> <p>15 Q. And, in fact, in 2008 seven inmates 16 died under Mr. Mills' watch, correct?</p> <p>17 MR. SPELLACY: Objection.</p> <p>18 A. What year?</p> <p>19 Q. 2018.</p> <p>20 A. Okay. Yes.</p> <p>21 Q. Excuse me if I --</p> <p>22 A. Yeah. I think you said 2008.</p> <p>23 Q. And, in fact, an eighth inmate died 24 in December shortly after Mr. Mills left?</p> <p>25 MR. SPELLACY: Objection.</p>

<p style="text-align: right;">Page 314</p> <p>1 A. That is correct.</p> <p>2 Q. From a financial perspective, these</p> <p>3 types of health incidents could be costly to the</p> <p>4 corrections department, right?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 A. To the county, yes.</p> <p>7 Q. That's because it would result in</p> <p>8 increased spending in medical treatments?</p> <p>9 MR. SPELLACY: Objection.</p> <p>10 A. No. Mine was when lawyers start</p> <p>11 filing wrongful death suits, it's going to cost</p> <p>12 the county a lot of money.</p> <p>13 Q. So lawsuits can follow an inmate's</p> <p>14 death?</p> <p>15 A. Yes. In fact, there are lawsuits</p> <p>16 filed already on these deaths.</p> <p>17 Q. How many such lawsuits have been</p> <p>18 filed; do you know?</p> <p>19 A. I don't know. You'd have to ask</p> <p>20 Mr. Lambert that.</p> <p>21 Q. And do you know what sort of damages</p> <p>22 have been requested in those lawsuits?</p> <p>23 MR. SPELLACY: Objection.</p> <p>24 A. I don't know but they're wrongful</p> <p>25 death suits, so if somebody died, that means</p>	<p style="text-align: right;">Page 316</p> <p>1 things, ma'am.</p> <p>2 Q. Are you aware that Mr. Mills</p> <p>3 received this \$16,700 payout when he resigned?</p> <p>4 A. This is a misnomer, because when</p> <p>5 you're a county employee or a public employee,</p> <p>6 you accrue vacation time. When you quit or</p> <p>7 resign, you get whatever vacation time that you</p> <p>8 have earned. So this \$16,700 is just his</p> <p>9 vacation time that he accrued over the years of</p> <p>10 working for the county. This is nothing</p> <p>11 unusual.</p> <p>12 Q. So you're aware that he did receive</p> <p>13 that money?</p> <p>14 A. Yeah, but it's a lot to do about</p> <p>15 nothing. He earned that vacation time.</p> <p>16 Q. What is the current status of the</p> <p>17 Mills case?</p> <p>18 MR. SPELLACY: Objection.</p> <p>19 Don't answer that.</p> <p>20 Q. Like what is the procedural posture</p> <p>21 of the Mills case currently?</p> <p>22 A. He's been indicted.</p> <p>23 Q. He's been indicted. Have there been</p> <p>24 any hearings in the Mills case, any public</p> <p>25 hearings?</p>
<p style="text-align: right;">Page 315</p> <p>1 money.</p> <p>2 Q. What other costs would the county</p> <p>3 incur in situations like this one?</p> <p>4 A. What do you mean?</p> <p>5 MR. SPELLACY: Objection.</p> <p>6 Q. In the case of multiple inmate</p> <p>7 deaths.</p> <p>8 A. I don't understand the question,</p> <p>9 what you mean. I'm sorry.</p> <p>10 Q. Speaking for your office, does your</p> <p>11 office need to expend resources in order to</p> <p>12 prosecute the Mills case?</p> <p>13 MR. SPELLACY: Objection. He's not</p> <p>14 here speaking for his office on the Mills case.</p> <p>15 A. All I can tell you is that our</p> <p>16 offices was the lead -- lead prosecutorial</p> <p>17 office that did this case.</p> <p>18 Q. Okay. And you yourself are actually</p> <p>19 working on the case?</p> <p>20 A. I'm part of that team, yes.</p> <p>21 Q. And so part of your time is now</p> <p>22 being spent on the Mills prosecution as opposed</p> <p>23 to other prosecutions?</p> <p>24 MR. SPELLACY: Objection.</p> <p>25 A. Correct. I do a wide variety of</p>	<p style="text-align: right;">Page 317</p> <p>1 A. No.</p> <p>2 Q. Have there been any bond hearings,</p> <p>3 for example?</p> <p>4 A. Arraignment is next week.</p> <p>5 Q. Is he being held currently?</p> <p>6 A. No. What happens is, at least in</p> <p>7 this county, when you get indicted, if we don't</p> <p>8 arrest you, you get a notice in the mail to show</p> <p>9 up for arraignment.</p> <p>10 Q. So he's being expected to</p> <p>11 essentially self-report?</p> <p>12 A. Show up for arraignment. If he</p> <p>13 doesn't show up for arraignment, then a capias</p> <p>14 is issued for his arrest.</p> <p>15 Q. And in what cases did you say that</p> <p>16 that process is followed?</p> <p>17 A. Unless somebody is not arrested out</p> <p>18 of the grand jury, meaning if you want to arrest</p> <p>19 somebody after indictment in the grand jury,</p> <p>20 there's a process to get an arrest warrant after</p> <p>21 you get indicted, as to people that are going to</p> <p>22 flee or may be a danger to the community, but</p> <p>23 most white collar criminals like this -- in</p> <p>24 fact, the majority of the people just get</p> <p>25 notices to show up.</p>

<p style="text-align: right;">Page 318</p> <p>1 Q. And why is that? Why wouldn't he be 2 arrested?</p> <p>3 A. Because he's not a threat to the 4 community, he's not a flight risk, and that's 5 what we'd have to argue to the judge when you 6 want the warrant. And he's not. He's not going 7 anywhere.</p> <p>8 MS. WOODS: Can we go off the 9 record?</p> <p>10 THE VIDEOGRAPHER: Off the record, 11 4:40.</p> <p>12 (Recess had.)</p> <p>13 THE VIDEOGRAPHER: On the record, 14 4:41.</p> <p>15 MS. WOODS: So in light of the 16 issues with document production, we will be 17 keeping this deposition open, and -- but I have 18 no further questions today nor do my 19 co-defendant counsel.</p> <p>20 MR. SPELLACY: Anyone on the phone?</p> <p>21 MS. GATES: I'm here. Lisa Gates.</p> <p>22 No questions.</p> <p>23 MR. SPELLACY: So your position is 24 you're keeping the deposition open?</p> <p>25 MS. WOODS: That's right.</p>	<p style="text-align: right;">Page 320</p> <p>1 Whereupon, counsel was requested to give 2 instruction regarding the witness' review of 3 the transcript pursuant to the Civil Rules. 4</p> <p>5 SIGNATURE:</p> <p>6 Transcript review was requested pursuant to 7 the applicable Rules of Civil Procedure. 8</p> <p>9 TRANSCRIPT DELIVERY:</p> <p>10 Counsel was requested to give instruction 11 regarding delivery date of transcript. 12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 319</p> <p>1 THE VIDEOGRAPHER: Off the record, 2 4:42.</p> <p>3</p> <p>4 (Deposition concluded at 4:42 p.m.)</p> <p>5 - - - - -</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 321</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 The State of Ohio,)</p> <p>3) SS:</p> <p>4 County of Cuyahoga.)</p> <p>5</p> <p>6 I, Renee L. Pellegrino, a Notary Public 7 within and for the State of Ohio, duly 8 commissioned and qualified, do hereby certify 9 that the within named witness, JAMES A. GUTIERREZ, 10 ESQ., was by me first duly sworn to testify the 11 truth, the whole truth and nothing but the truth in 12 the cause aforesaid; that the testimony then given 13 by the above referenced witness was by me reduced to 14 stenotypy in the presence of said witness; 15 afterwards transcribed, and that the foregoing is a 16 true and correct transcription of the testimony so 17 given by the above referenced witness. 18 I do further certify that this 19 deposition was taken at the time and place in the 20 foregoing caption specified and was completed 21 without adjournment. 22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 322</p> <p>1 I do further certify that I am not a 2 relative, counsel or attorney for either party, 3 or otherwise interested in the event of this 4 action.</p> <p>5 IN WITNESS WHEREOF, I have hereunto set 6 my hand and affixed my seal of office at 7 Cleveland, Ohio, on this 5th day of February, 2019.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 <i>Renee L. Pellegrino</i></p> <p>13 Renee L. Pellegrino, Notary Public 14 within and for the State of Ohio</p> <p>15</p> <p>16 My commission expires October 12, 2020.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 324</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2 ASSIGNMENT REFERENCE NO: 3208896</p> <p>3 CASE NAME: In Re: National Prescription Opiate Litigation v DATE OF DEPOSITION: 1/31/2019</p> <p>4 WITNESS' NAME: James A. Gutierrez, Esq</p> <p>5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me</p> <p>7 I have made no changes to the testimony as transcribed by the court reporter</p> <p>8</p> <p>9 Date <u>James A. Gutierrez, Esq</u></p> <p>10 Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:</p> <p>12 They have read the transcript; 13 They signed the foregoing Sworn Statement; and 14 Their execution of this Statement is of their free act and deed</p> <p>15 I have affixed my name and official seal</p> <p>16 this _____ day of _____, 20____</p> <p>18 Notary Public</p> <p>19 Commission Expiration Date</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 323</p> <p>1 Veritext Legal Solutions 1100 Superior Ave 2 Suite 1820 3 Cleveland, Ohio 44114 4 Phone: 216-523-1313</p> <p>5 February 5, 2019</p> <p>6 To: Leo M. Spellacy, Jr</p> <p>7 Case Name: In Re: National Prescription Opiate Litigation v</p> <p>8 Veritext Reference Number: 3208896</p> <p>9 Witness: James A. Gutierrez, Esq Deposition Date: 1/31/2019</p> <p>10 Dear Sir/Madam:</p> <p>11 The deposition transcript taken in the above-referenced 12 matter, with the reading and signing having not been 13 expressly waived, has been completed and is available 14 for review and signature. Please call our office to 15 make arrangements for a convenient location to 16 accomplish this or if you prefer a certified transcript 17 can be purchased</p> <p>18 If the errata is not returned within thirty days of your 19 receipt of this letter, the reading and signing will be 20 deemed waived</p> <p>21 Sincerely, 22 Production Department</p> <p>23 NO NOTARY REQUIRED IN CA</p>	<p style="text-align: right;">Page 325</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2 ASSIGNMENT REFERENCE NO: 3208896</p> <p>3 CASE NAME: In Re: National Prescription Opiate Litigation v DATE OF DEPOSITION: 1/31/2019</p> <p>4 WITNESS' NAME: James A. Gutierrez, Esq</p> <p>5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me</p> <p>7 I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s)</p> <p>9 I request that these changes be entered as part of the record of my testimony</p> <p>10 I have executed the Errata Sheet, as well 11 as this Certificate, and request and authorize that both be appended to the transcript of my 12 testimony and be incorporated therein</p> <p>13 Date <u>James A. Gutierrez, Esq</u></p> <p>14 Sworn to and subscribed before me, a 15 Notary Public in and for the State and County, the referenced witness did personally appear 16 and acknowledge that:</p> <p>17 They have read the transcript; They have listed all of their corrections 18 in the appended Errata Sheet; They signed the foregoing Sworn Statement; and 19 Their execution of this Statement is of their free act and deed</p> <p>21 I have affixed my name and official seal</p> <p>22 this _____ day of _____, 20____</p> <p>23 Notary Public</p> <p>24</p> <p>25 Commission Expiration Date</p>

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19	_____
20	Date _____ James A. Gutierrez, Esq.
21	SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22	DAY OF _____, 20 _____. 23 _____
24	Notary Public
25	Commission Expiration Date _____

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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